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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 November 1st, 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
- 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
- Bill Pacheco, Liquor Control Officer IV
- Lianne Suzuki, Private Secretary

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NOVEMBER 1, 2018; 9:10 A.M.

WAILUKU, MAUI, HAWAII

-oOo-

CHAIR U'U: (Gavel.) The meeting of the Liquor Control Adjudication Board is now called to order. Will the boards and staff members please introduce themselves starting with our commission secretary.

MS. SUZUKI: Lianne Suzuki, liquor control.

MEMBER AIWOHI: Oh. Lahela Aiwohi, Upcountry.

MEMBER WILLIAMS: Jason Williams, Wailuku.

MR. KUSHI: Ed Kushi, corp counsel's office.

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

MEMBER HELM: Zach Helm, Molokai.

MEMBER NASCIMENTO: Herman Nascimento, Makawao.

MR. MUKAI: Glen Mukai, liquor control.

MS. TYAU: Georgette Tyau, liquor control.

MR. HANANO: Peter Hanano on behalf of the prosecuting attorney.

MR. PACHECO: Bill Pacheco, department of liquor control.

CHAIR U'U: Just a quick update. Do you want to go over the changes or you want me?

MR. HANANO: For what?

CHAIR U'U: For the Count 1. Count 1 will be dismissed on A.

1 MR. HANANO: Yeah, yeah. I guess we can call the
2 case first.

3 CHAIR U'U: Okay. I will call the case.

4 We will now here Complaint and Accusation
5 No. 2018-19 against Easy Street, LLC doing business as
6 McGrath's Hang Loose Lounge.

7 MR. JORGENSEN: Good morning, Chairman U'u, Members
8 of the Adjudication Board, and Staff. My name is Dave
9 Jorgensen, I'm the attorney for the licensee Easy Street, LLC
10 dba McGrath's Hang Loose Lounge. With me this morning is Brad
11 McGrath, who is the principal of the company.

12 CHAIR U'U: Thank you. So are you representing the
13 respondent?

14 MR. JORGENSEN: Yes, sir.

15 CHAIR U'U: At this time you have the option of
16 having the charges publicly read or you can waive the reading.
17 What is your preference?

18 MR. JORGENSEN: Waive the reading.

19 CHAIR U'U: Thank you. Do you have legal counsel?
20 You are legal counsel.

21 Do you understand that you have the right -- do you
22 understand the charges against you?

23 MR. JORGENSEN: Yes, sir.

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

25 MR. JORGENSEN: Count 1 was dismissed and we had

1 changed the plea on Count 2 to no contest about a month ago.

2 MR. HANANO: That's right, Chair. There is a plea
3 agreement in this matter between the county and the licensee
4 and that agreement is that in Count 1, that charge will be
5 dismissed with prejudice and Count 2, the licensee will be
6 pleading no contest.

7 CHAIR U'U: Any questions by the commission?

8 MEMBER NASCIMENTO: No.

9 CHAIR U'U: Thank you.

10 Do you understand the violations that Department of
11 Liquor Control alleges against you?

12 MR. JORGENSEN: Yes, sir.

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

15 MR. JORGENSEN: Yes, sir.

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

19 MR. JORGENSEN: Yes, sir.

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

23 MR. JORGENSEN: Yes, it is.

24 CHAIR U'U: Do you understand that on each count, if
25 the board accept your plea of no contest, you'll be found

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

4 MR. JORGENSEN: Yes, sir.

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

6 MR. JORGENSEN: Yes.

7 CHAIR U'U: The board hereby finds the licensee has
8 entered a knowing and voluntary plea of no contest. The board
9 accepts your plea and finds you guilty of Count 2 in Complaint
10 and Accusation No. 2018-19.

11 Will the department present a summary of the case?

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

13 On March 8th, 2018 at about 9:24 p.m. Liquor Control
14 Officer Cielo Molina entered the McGrath's Hang Loose Lounge
15 located 333 Dairy Road, Suite 105, Kahului, Maui, Hawaii to
16 conduct an inspection. Upon entering the premises, Officer
17 Molina observed a female bartender later identified as Fayma
18 Angeli Domingo Sales working behind the bar counter. There
19 were approximately 23 patrons within the premises at the time.

20 After entering, Officer Molina noticed a male patron
21 playing on a video card game machine. At that time Officer
22 Molina requested to see the permit for the video game device.
23 A female later identified as Tiffany Angel Line directed Sales
24 to look inside a red and green binder near the cash register
25 for the permit. Officer Molina noticed that Line had a stack

1 of paperwork and two shot glasses filled with a light amber
2 color liquid in front of her. Officer Molina observed Line to
3 take a sip from one of the shot glasses, set it down, then
4 take a sip from the other shot glass. As they looked for the
5 video game machine permit, Line discovered that the permit was
6 posted on the back wall of the bar.

7 After reviewing the permit, Officer Molina verified
8 that Line was, in fact, an employee of the licensee. Line
9 related that she was off the clock and not bartending, but
10 just doing paperwork. When asked what type of paperwork Line
11 was working on, Line was silent. Line again stated that she
12 was off work, but just helping Sales find what she was looking
13 for. Upon further inquiry Sales related that Line was off
14 work, but was doing some inventory paperwork for the premises.
15 When asked for a copy of Line' bar tab, Sales indicated that
16 Line paid with cash so a receipt could not be reprinted;
17 however, Sales confirmed that Line was drinking a shot of
18 Corzo tequila with ginger ale and her tab totaled about \$14.

19 Nothing further, Chair. Thank you.

20 CHAIR U'U: Thank you.

21 Mr. Jorgensen, you now have the opportunity to make
22 a statement regarding this case, you may also inform the board
23 of any mitigating circumstances which may or may not apply to
24 sentencing.

25 MR. JORGENSEN: Thank you. Basically in this case

1 Tiffany shouldn't have been touching paperwork while she was
2 there. Fayma was kind of new at the time and she had
3 questions, so Tiffany was trying to help her. It was, you
4 know, a mistake for her to do so and Tiffany was actually
5 suspended for a short period of time and then trained. They
6 talked to her and because she was a good employee -- she's
7 since moved to Las Vegas, but -- you know, my client knows
8 that was mistake and everybody knows you're not -- you know,
9 we're not supposed to do that and everybody has been told
10 that.

11 And we don't really have anything else to offer. It
12 was a mistake and, you know, kind of mea culpa, that's why
13 we're here. And if there's any questions, we -- my client
14 does have a -- what I understand is a pretty good record with
15 the department. We would ask that it be -- a letter of
16 reprimand be issued. This kind of thing is not going to
17 happen again.

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

19 MEMBER WILLIAMS: I was just wondering, was she
20 being paid while she was doing it?

21 MR. JORGENSEN: No, she was off duty. I mean, she
22 wasn't on duty, but if you're in -- if you're in the licensed
23 premises and you touch paperwork, you touch a glass, anything;
24 you're on duty whether you're getting paid or not. And we
25 understand that.

1 MEMBER WILLIAMS: Okay.

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

3 (No response.)

4 CHAIR U'U: Seeing none, could we have the
5 director's argument as to what penalty?

6 MR. HANANO: Yes, Chair. Original license for this
7 licensee was issued back in October of 2009. There are prior
8 letters of reprimand, but none involving the same type of
9 charge as in Count 2. So in light that, we're recommending on
10 Count 2 a fine of \$500.

11 CHAIR U'U: Okay. Thank you. The board will take
12 this matter into consideration. I'll entertain a motion to go
13 to deliberate. Motion?

14 MEMBER HELM: So moved.

15 CHAIR U'U: We have a motion.

16 MEMBER AIWOHI: Second.

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

18 (Response.)

19 CHAIR U'U: (Gavel.)

20 (Pause in Proceedings: 9:18 a.m.-9:28 a.m.)

21 CHAIR U'U: The board is now back in session. After
22 a careful deliberation, the board has come up with a \$500 fine
23 with \$400 of that being suspended provided there is no
24 conviction for the same offense for a period of one year.
25 Thank you for you guys' time.

1 MR. JORGENSEN: Thank you very much. Have a good
2 day.

3 MEMBER WILLIAMS: Thank you, guys.

4 CHAIR U'U: At this time we're going to take up C.
5 We're going to bypass B and go to C. Any questions?

6 (No response.)

7 CHAIR U'U: We will now hear Complaint and
8 Accusation No. 2018-24 against Tiki Tiki Thai Cuisine 2 doing
9 business as Tiki Tiki Thai Cuisine.

10 Thank you for stepping forward. Could you please
11 state your names and in what capacity you represent the
12 respondent.

13 MR. KAWAGISHI: Michael Kawagishi on behalf of Tiki
14 Tiki Thai Cuisine 2, LLC. And with me is Panompon Jares. And
15 I am the agent for the company.

16 CHAIR U'U: Can you state your last name again?

17 MR. KAWAGISHI: Kawagishi.

18 CHAIR U'U: Kawaishi?

19 MR. KAWAGISHI: Kawagishi.

20 CHAIR U'U: "-gishi." Thank you.

21 At this time you have the option of having the
22 charges publicly read or you can waive the reading. What is
23 your --

24 MR. KAWAGISHI: We waive the reading.

25 CHAIR U'U: Thank you. For the record,

1 Mr. Kawagishi, do you represent the respondent involved?

2 MR. KAWAGISHI: Yes.

3 CHAIR U'U: And you are legal counsel?

4 MR. KAWAGISHI: No.

5 CHAIR U'U: No. Do you understand you have the
6 right to have your legal counsel present?

7 MR. KAWAGISHI: Yes.

8 CHAIR U'U: Do you understand the charges against
9 you?

10 MR. KAWAGISHI: Yes.

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

12 MR. KAWAGISHI: No contest.

13 CHAIR U'U: Do you understand the violations the
14 Department of Liquor Control allegations against you?

15 MR. KAWAGISHI: Yes.

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

18 MR. KAWAGISHI: Yes.

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

22 MR. KAWAGISHI: Yes.

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

1 MR. KAWAGISHI: Yes.

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

8 MR. KAWAGISHI: Yes.

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

10 MR. KAWAGISHI: Yes.

11 CHAIR U'U: The board hereby finds the licensee has
12 entered a knowing and voluntary plea of no contest. The board
13 accepts your plea and finds you guilty of Counts 1 and 2
14 reflected in Complaint and Accusation No. 2018-24.

15 Will the department present a summary of the case?

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

17 This case involved a minor decoy operation which
18 took place on Tuesday, May 15th, 2018. The minor decoy team
19 was comprised of Liquor Controls Officers Cullen Kawano,
20 Robert Shiigi, Trainee Marc Velasquez, and Maui Police
21 Department Officer Shane Yoshizawa and Andrew Cabral, and a
22 male minor decoy.

23 The Minor Decoy Checklist was reviewed with the
24 minor decoy informing him of the requirements and rules
25 pertaining to minor decoy operations. The rules require,

1 among other things, that the minor decoy will carry his valid
2 Hawaii license card on his person at all times, that he answer
3 any questions about his age truthfully, and that he present
4 his license when asked by any employee of the licensed
5 premises to do so. The minor decoy reviewed and signed the
6 Minor Decoy Checklist indicating he understood what was read
7 to him. The minor decoy's Hawaii Driver's License card was
8 printed in a vertical format which clearly indicated that the
9 minor decoy became 21 years of age on 11/21/2020. As part of
10 the operation the minor decoy was provided with a \$20 bill to
11 use as buy money.

12 On May 15, 2018 at about 9:18 p.m. Officer Cabral
13 and the minor decoy entered into the Tiki Tiki Thai Cuisine
14 located at 658 Front Street, No. 145A, Lahaina, Maui, Hawaii.
15 At that time there were less than ten patrons within the
16 premises and there appeared to be only one employee working in
17 the front area. The female employee, later identified as
18 Jennifer Pollante, appeared to be busy with other patrons and
19 initially did not acknowledge the arrival of the minor decoy
20 or Officer Cabral.

21 At first Officer Cabral checked out the menu and
22 when Pollante made contact with the minor decoy, Pollante
23 appeared to be very rushed and abrupt. Next, the minor decoy
24 ordered a Coor's Light beer while Officer Cabral looked at the
25 menu. After that, Pollante retrieved, opened, and served a

1 bottle of Coor's Light brand beer to the minor decoy.
2 Pollante did not ask the minor decoy for his age or for his
3 ID.

4 After serving the minor decoy the Coor's Light
5 bottle of beer, Pollante left to attend to other patrons.
6 Following that, the minor decoy picked up the bottle of beer,
7 taking possession of the beer. Officer Cabral then approached
8 the minor decoy and took possession of the beer, then
9 instructed the minor decoy to return to the operations
10 vehicle. Once the minor decoy left the premises, Officer
11 Cabral informed Pollante that she had just served liquor to a
12 minor.

13 As part of the investigation, Jennifer Pollante was
14 interviewed, at which time she provided the following
15 statement in pertinent part: Pollante stated that on May 15,
16 2018 she was the only employee working in the front area of
17 the liquor licensed premises. She was busy dealing with other
18 customers and did not notice when the minor decoy entered the
19 premises. Pollante stated that she was in the process of
20 closing up the premises, so she was rushing when dealing with
21 the minor decoy. She stated that since she was rushing, she
22 did not think to ask for the minor decoy's ID or ask his age.
23 She just wanted to hurry up -- hurry to serve the minor decoy
24 because she felt bad that she had not noticed his arrival.

25 Pollante stated that she apologized to the minor

1 decoy, who told her it was okay and wanted to have a drink
2 while looking at the menu. Pollante stated that she took the
3 minor decoy's order, served him, and returned to -- and
4 attended to other customers. However, when she returned, she
5 was informed by the police officer that she had just served a
6 minor decoy. Pollante stated that the licensee did not
7 provide much training in regards to serving liquor, but did
8 require her to get an Employee Approved By the Director
9 Certification card.

10 That's all I have, Chair. Thank you.

11 CHAIR U'U: Thank you.

12 Any questions of members from the board?

13 (No response.)

14 CHAIR U'U: Seeing none, Mr. Kawagishi, you now have
15 the opportunity to make a statement regarding this case. You
16 may also inform the board of any mitigating circumstances
17 which may or may not apply to sentencing.

18 MR. KAWAGISHI: The principals of Tiki Tiki Thai
19 Cuisine 2, LLC take enforcement of the rules very seriously,
20 especially where it deals with intoxicated persons and minors.
21 They do not agree with the statement that Pollante made
22 because the employees get regular -- have regular meetings,
23 like at least every other week. They are regularly reminded
24 to check all IDs. Pollante was a temporary worker.

25 You know, they get training, they get reminded,

1 other than to have someone physically standing over them, I
2 don't know how much more the employer has to do to ensure that
3 they follow the rules. I personally have given to employees
4 at Tiki Tiki Thai Cuisine training and, you know, my
5 training's quite extensive, I go over the whole thing. I
6 worked for the department 20 years, I mean, I know what goes
7 on, I know how the employees act. Despite all of this, you
8 know, this incident happened. We're at a loss as to what to
9 do.

10 CHAIR U'U: Thank you.

11 Any questions from the members of the board?

12 MEMBER WILLIAMS: Do you have your employees sign on
13 anything or sign an acknowledgment that they did the
14 training --

15 MS. JARES: Yes.

16 MEMBER WILLIAMS: -- on a weekly or A quarterly
17 basis?

18 MR. KAWAGISHI: I have one here that is -- I gave
19 them an additional training session on October 6th and had all
20 of the employees for all three restaurants sign.

21 MEMBER WILLIAMS: October 5th of this year?

22 MR. KAWAGISHI: Yes.

23 MEMBER WILLIAMS: The event happened in May?

24 MS. JARES: Yes.

25 MEMBER WILLIAMS: Do you have anything before?

1 MR. KAWAGISHI: No, I don't.

2 MEMBER WILLIAMS: Okay.

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

4 (No response.)

5 CHAIR U'U: Seeing none, can we have the director's
6 argument as to a penalty?

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

8 The original license for this licensee was issued
9 back in September of 2016. There are no prior convictions
10 whatsoever. And because of that, on Count 1 we're
11 recommending a \$2,000 fine with 1,000 suspended on the
12 condition that there are no further convictions for the same
13 offense within a one-year period; Count 2, a \$500 fine.

14 MR. KUSHI: A question. Prosecutor, was the
15 employee prosecuted?

16 MR. HANANO: I'm not too sure, but I would assume
17 so.

18 MR. KUSHI: It's in the process or --

19 MR. HANANO: I'm not sure. I'm not sure.

20 MR. KAWAGISHI: It is my understanding that the
21 employee was found guilty when she went to court.

22 MR. KUSHI: She did go to court?

23 MR. KAWAGISHI: Yes. And then she has since left
24 employment and -- because she felt really bad about what
25 happened.

1 CHAIR U'U: I have a question. So this is one
2 license, but you've got three restaurants, is that -- did I
3 hear that right prior?

4 MR. KAWAGISHI: She has three restaurants.

5 CHAIR U'U: Three separate on the one license?

6 MR. KAWAGISHI: No.

7 CHAIR U'U: Okay, okay.

8 Any other questions from the board?

9 (No response.)

10 CHAIR U'U: The board will now take this matter into
11 consideration. I'll entertain a motion to go into
12 deliberation. May I have a motion?

13 MEMBER WILLIAMS: I'll move.

14 CHAIR U'U: Second?

15 MEMBER AIWOHI: Second.

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

17 (Response.)

18 CHAIR U'U: (Gavel.)

19 (Pause in Proceedings: 9:40 a.m.-9:43 a.m.)

20 CHAIR U'U: The board is now back in open session.
21 After careful deliberation, on Count 1 a \$2,000 fine with
22 \$1,000 being suspended provided there's no conviction of the
23 same offense for a period of one year, and for Count 2, a \$500
24 fine. The department will notify you when payment is due.
25 Thank you.

1 MR. KAWAGISHI: Okay. Thank you.

2 CHAIR U'U: We will now hear Complaint and
3 Accusation No. 2018-23 against Foods 4 Life doing business as
4 Rodeo General Store.

5 Good morning.

6 MEMBER AIWOHI: Good morning.

7 CHAIR U'U: Good morning. Good morning. Thank you
8 for stepping forward. Will the respondent's representative
9 please step forward, state your names and in what capacity you
10 represent the respondent.

11 MR. STURMAN: I'm Gene Sturman. I'm one of the four
12 partners in the corporation.

13 CHAIR U'U: Gene, what's the last --

14 MR. STURMAN: Gene Sturman, S-T-U-R-M-A-N.

15 CHAIR U'U: Thank you. At this time you have the
16 option of having the charges publicly read or you can waive
17 the reading. What is your preference?

18 MR. STURMAN: We can waive the reading.

19 CHAIR U'U: Okay. Mr. Sturman, for the record, do
20 you represent the respondent involved?

21 MR. STURMAN: Sorry. Say that again.

22 CHAIR U'U: For the record, do you represent the
23 respondent involved?

24 MR. STURMAN: Yes, I do represent the respondent.

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

1 MR. STURMAN: No, I do not.

2 CHAIR U'U: Do you understand that you have the
3 right to have legal counsel present?

4 MR. STURMAN: I do, yes, sir.

5 CHAIR U'U: Do you understand the charges against
6 you?

7 MR. STURMAN: Yes, I do.

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

9 MR. STURMAN: No contest. I believe or --

10 CHAIR U'U: Yeah. Do you understand the violations
11 that Department of Liquor Control alleges against you?

12 MR. STURMAN: Yes, I do.

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

15 MR. STURMAN: Yes.

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

19 MR. STURMAN: I do understand, yes.

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

23 MR. STURMAN: Yes, it is.

24 CHAIR U'U: Do you understand that on each count, if
25 the board accepts your plea of no contest, you'll be found

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

5 MR. STURMAN: Yes, I do.

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

7 MR. STURMAN: I do, yes.

8 CHAIR U'U: The board hereby finds that the licensee
9 has entered a knowing and voluntary plea of no contest. The
10 board accepts your plea and finds you guilty of Counts 1 and 2
11 reflected in Complaint and Accusation No. 2018-23.

12 Will the department present a summary of the case?

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

14 This case involved a minor decoy operation which
15 took place on Thursday February 15, 2018. The minor decoy
16 team was composed of Liquor Control Officers Cullen Kawano,
17 Robert Shiigi, Trainee Andrew Carbonel, and Maui Police
18 Department Officers Ryan Nagata and Stuart Farberow, as well
19 as a male minor decoy.

20 The Minor Decoy Checklist was reviewed with the
21 minor decoy informing him of the requirements and rules
22 pertaining to minor decoy operations. The rules require,
23 among other things, that the minor decoy carry his valid
24 Hawaii Driver's License card on his person, that he answer any
25 questions about his age truthfully, and that he present the

1 license card when asked by any employee of the licensed
2 premises to do so. The minor decoy reviewed and signed the
3 Minor Decoy Checklist indicating he understood what was read
4 him. The minor decoy's driver's -- Hawaii Driver's License
5 was printed in a vertical format which clearly indicated the
6 minor decoy would become 21 years of age on 11/21/2020. As
7 part of the operation, the minor decoy was provided with a \$20
8 bill to use as buy money.

9 On February 15, 2018 at about 9:17 p.m. Officer
10 Nagata entered the Rodeo General Store located at 3661 Baldwin
11 Avenue, Makawao, Maui, Hawaii. The minor decoy entered about
12 one minute later. There were about five other patrons within
13 the premises at the time. While inside, the minor decoy
14 walked up to the refrigerator, grabbed a can of Maui Brewing
15 Company Makawao Wheat beer, then took the can of beer to the
16 checkout counter and handed it to the female cash register.

17 Officer Nagata stood behind the minor decoy as the
18 minor decoy checked out. The cashier, later identified as
19 Kimberly Root, asked the minor decoy for his identification,
20 at which time the minor decoy handed his valid Hawaii Driver's
21 License to Root. Root took the ID, looked at it for a second
22 or two, then handed the ID back to the minor decoy. Following
23 that, Root indicated the total amount due for the beer, at
24 which time the minor decoy handed Root the \$20 buy money.
25 Root then took the \$20 bill, rang up the purchase, and handed

1 over the change and the receipt to the minor decoy. The minor
2 decoy initially took possession of the beer, then after the
3 transaction was completed, Officer Nagata took possession of
4 the can of beer, the change, and receipt. The minor decoy was
5 instructed to return to the operations vehicle which was
6 parked outside.

7 As part of the investigation, Kimberly Root was
8 interviewed, at which time she provided the following
9 statement in personal -- in pertinent part:

10 Stated that she had just started working for the
11 licensee and that when she first started, the managers went
12 over the process of selling liquor and the basics of checking
13 IDs. In addition, from time to time Rodeo General Store has
14 meetings to go over sales procedures which sometimes covers
15 the sale of liquor. Root acknowledged that she sold the
16 liquor to the minor decoy and that she asked for and checked
17 the minor decoy's ID, but -- but that the -- but thought --
18 I'm sorry. But thought that the minor decoy looked old enough
19 to buy liquor.

20 Nothing further. Thank you, Chair.

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

22 (No response.)

23 CHAIR U'U: Seeing none, Mr. Sturman, you have the
24 opportunity to make a statement regarding this case. You
25 might also inform the board of any mitigating circumstances

1 which may or not -- may or may not apply to sentencing.

2 MR. STURMAN: There really isn't much excuse in the
3 situation at all, it's -- there's nothing to add at all. We
4 spoke with her and she just was going through the motions,
5 basically, looking at the ID and hitting yes on the register
6 that they were over 21 and never really did any of the math in
7 her head, so it was pretty cut-and-dried, unfortunately.

8 CHAIR U'U: Any questions by the board?

9 MEMBER WILLIAMS: Is she still an employee of yours?

10 MR. STURMAN: She is. She's actually one of our
11 best employees, amazingly. I mean, this situation was -- you
12 know, you kind of go back and forth a little bit on should you
13 keep them or get rid of them because it's a pretty serious
14 problem, but a -- she's just such a good person, I still -- I
15 still can't believe it as we sit here today that she was not
16 able to decipher the age when -- especially when it's in
17 vertical format; right?

18 MEMBER WILLIAMS: Sure.

19 MR. STURMAN: Which basically is telling you that
20 they're not 21 by handing you the ID in vertical format.

21 MEMBER WILLIAMS: Was there any -- any suspension or
22 anything at all?

23 MR. STURMAN: No, there was not. She -- I mean,
24 she's a --

25 MEMBER WILLIAMS: Good employee?

1 MR. STURMAN: She's a very nice, nice girl, she's
2 very -- kind of quiet and she was way harder on herself than
3 we ever could have been and she has the charge as well, so --
4 I mean, she's 20 -- 21 years old, I think, so she's never had
5 any kind of charge or trouble with the law at all, so just
6 seeing that ticket in her hand was just plenty punishment
7 enough.

8 MEMBER AIWOHI: So she was charged?

9 MR. STURMAN: Yes.

10 CHAIR U'U: Any more questions by the board?

11 (No response.)

12 CHAIR U'U: Seeing none, director's argument as to a
13 penalty?

14 MR. HANANO: Thank you, Chair.

15 The original was -- license was issued back in June
16 of 2008. There is a prior conviction for selling liquor to a
17 minor in two thousand -- October of 2010, which is outside the
18 five-year period. In light of that, we are recommending in
19 Count 1 a \$2,000 fine with \$500 suspended on the condition
20 that there's no further convictions for the same offense
21 within a one-year period and in Count 2 a \$500 fine.

22 CHAIR U'U: Questions by the board?

23 The board will take this matter into consideration.
24 I'll entertain a motion to go into deliberation.

25 MEMBER WILLIAMS: Chair, can I ask a question real

1 quick?

2 CHAIR U'U: You have a question?

3 MEMBER WILLIAMS: Peter, quick question, why \$500
4 suspended?

5 MR. HANANO: I'm sorry.

6 MEMBER WILLIAMS: Why \$500 suspended?

7 MR. HANANO: Okay, yeah. Normally we go 2,000 and
8 1,000 suspended for a first offense, but because there's a
9 prior -- but outside the five, you know, I can't recommend --
10 or I feel that I should not recommend the same thing that I
11 would to someone who didn't have any priors. And so I think
12 if it's within the five-year period, a second within a
13 five-year period, then it's an automatic \$2,000 with no
14 suspension. So I kind of went the middle ground, went 500
15 suspended instead of a thousand.

16 MEMBER WILLIAMS: I understand, thank you.

17 CHAIR U'U: Thank you.

18 And can I have a motion to deliberate.

19 MEMBER HELM: So moved.

20 CHAIR U'U: Can I have a second?

21 MEMBER WILLIAMS: Second.

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

23 (Response.)

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

25 (Pause in Proceedings: 9:53 a.m.-10:00 a.m.)

1 CHAIR U'U: The board is now back in session. After
2 a careful deliberation, for Count 1 will be a \$2,000 with a
3 thousand of that being suspended provided there is no
4 conviction on the same offense for a period of one year. For
5 Count 2, a \$500 fine. The department will notify you when
6 payment is due. Thank you.

7 MR. STURMAN: Thank you. Thank you, Board Members.

8 CHAIR U'U: At this time we'll be taking a ten-
9 minute recess. (Gavel.)

10 (Pause in Proceedings: 10:00 a.m.-10:06 a.m.)

11 CHAIR U'U: The board is now in open session.
12 (Gavel.) Under Other Matters -- we're going to turn to Other
13 Matters.

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

15 So this is the case that we heard -- I think it was
16 last month. This is Monkeypod Kitchen by Merriman. So what
17 happened in that case, the board sentenced -- imposed sentence
18 on the licensee and the first count was an overservice count
19 and under that section, the rules of the liquor commission
20 mandate a \$1,000 fine and I think the fine was -- that was
21 imposed was suspended. And so the county did file a motion
22 for reconsideration just for Count 1 and that's what we're
23 hearing right now.

24 I did -- I was in contact with the licensee's
25 attorney, I Gab Probenza, who indicated that they had no

1 objection to the motion. And I think that that was filed as
2 well.

3 CHAIR U'U: Okay. So what do you need on the
4 board's behalf?

5 MR. HANANO: Just a decision on whether to grant the
6 motion or not grant it.

7 CHAIR U'U: Okay. So --

8 MEMBER HELM: So just \$1,000 suspended.

9 CHAIR U'U: Okay. So you need a motion from us to
10 grant --

11 MR. HANANO: No. I mean, I'm fine with a motion.

12 CHAIR U'U: Okay.

13 MR. HANANO: So I guess at this point you need to
14 deliberate and discuss it and --

15 MEMBER WILLIAMS: Just for my understanding, so a
16 thousand dollar fine was -- there's a minimum.

17 MR. KUSHI: Hold on. Hold on. You need to
18 procedurally grant this motion to reconsider, which I would --
19 I would suggest you do, and then you can discuss it.

20 CHAIR U'U: Oh, okay. Okay. So go into
21 deliberation now, is that --

22 MR. KUSHI: No, no. Grant the motion to reconsider
23 and then hear his argument and questions from the board. The
24 decision you make, you go into deliberations.

25 CHAIR U'U: Okay. So at this time grant the motion,

1 we'll grant the motion to reconsider.

2 And any questions right now?

3 (No response.)

4 CHAIR U'U: Seeing none --

5 MEMBER WILLIAMS: Yeah, yeah. I was -- the question
6 I guess I have is: So it was a \$2,000 fine --

7 MR. KUSHI: Wait. Grant the motion first and then
8 get into the merits.

9 MEMBER WILLIAMS: Oh, so go to merits first.

10 CHAIR U'U: Okay.

11 MR. KUSHI: "All in favor of the motion."

12 CHAIR U'U: All favor in favor of the motion, say
13 "aye."

14 (Response.)

15 CHAIR U'U: Any opposed?

16 (No response.)

17 CHAIR U'U: Motion carries.

18 MR. KUSHI: Now.

19 MR. HANANO: Okay. So -- oh, did you have a
20 question?

21 MEMBER WILLIAMS: No. Go ahead. I'm sorry.

22 MR. HANANO: Yeah. So basically as I was saying
23 earlier, in Count 1, which is the overservice count, under
24 Section 08-101-60(b)(1)(B) of the rules of the liquor
25 commission, the licensee was found guilty of that count

1 pursuant to a no contest plea and I believe the board issued a
2 fine of \$1,000 with the entire portion suspended on the
3 condition that there's no further convictions for the same
4 offense within a one-year period.

5 After the hearing, it was the next day I realized
6 that I think that -- you know, I remembered there was a
7 mandatory penalty, so I went back and I looked and, yes, under
8 Section 08-101-104, under Section sub (1) it says, "If the
9 licensee has not been convicted of committing the offense,"
10 281-78(1)(b) -- (1)(b) HRS -- oh, or 08-101(b), which is the
11 one that the licensee was charged under, the minimum sentence
12 shall be a fine of not less than \$1,000 no portion of which
13 may be suspended. So, you know, based on that, that's the
14 reason why I filed the motion.

15 MEMBER WILLIAMS: Okay. So I was wondering, so on
16 our side, we just -- you know, we -- there's really nothing
17 else to do except for say, hey, the rules, the regulator says
18 that we have to follow --

19 MR. HANANO: Right.

20 MEMBER WILLIAMS: -- \$1,000 minimum fine?

21 MR. HANANO: Right.

22 MEMBER WILLIAMS: Okay. And so for us, there's no
23 other question, we're just going through the technicality
24 saying -- say and do. I mean, I would guess.

25 MR. HANANO: No, no. I mean, as far as the motion,

1 all I'm asking is that the portion that was suspended in that
2 count be unsuspended.

3 MEMBER WILLIAMS: Gotcha.

4 CHAIR U'U: Yeah, okay. And what count was that
5 again?

6 MR. HANANO: Count 1.

7 MEMBER HELM: Count 1.

8 CHAIR U'U: Okay. So Count 1, just for clarity,
9 back then Count 1 was -- what we came up with was a fine of a
10 thousand dollars and a thousand dollars of that being
11 suspended?

12 MR. HANANO: That's correct.

13 CHAIR U'U: And then what you're saying is in the
14 rules that the minimum fine got to be a minimum of \$1,000;
15 correct?

16 MR. HANANO: Yes.

17 MEMBER HELM: I like the rules.

18 MEMBER WILLIAMS: Yeah.

19 CHAIR U'U: Do we deliberate right now?

20 MR. KUSHI: Before you go into deliberation,
21 Mr. Chair, a couple of things: 1) Staff, the findings have
22 not been issued yet? I haven't seen it yet.

23 MS. SUZUKI: (Nodded.)

24 MR. KUSHI: So -- okay. So there's still a chance
25 to revise that.

1 Secondly, for the record, Member Jason Williams was
2 present at that meeting, but I recall that he recused himself.
3 We have five here. I feel that -- unless the chair has any
4 other concerns, that his recusal at that meeting does not
5 affect what we're doing today because we're not
6 re-adjudicating the guilt of Count 1 or Count 2 --

7 CHAIR U'U: Right.

8 MR. KUSHI: -- we're just applying the appropriate
9 penalties. So I believe he can still participate, for the
10 record.

11 Again, the respondent licensee is not here and
12 basically he waived whatever rights they have to object to
13 this.

14 MEMBER WILLIAMS: Got it.

15 CHAIR U'U: Okay.

16 MR. KUSHI: Okay.

17 CHAIR U'U: Then we deliberate?

18 MR. KUSHI: Go into deliberation.

19 CHAIR U'U: Motion to deliberate?

20 MEMBER WILLIAMS: So moved.

21 CHAIR U'U: Second.

22 MEMBER AIWOHI: Second.

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

24 (Response.)

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

1 (Pause in proceedings: 10:12 a.m.-10:14 a.m.)

2 (Member Aiwohi left the room.)

3 CHAIR U'U: The board is now back in session. After
4 hearing what happened, at this time we want to amend the
5 decision from the board of the Count 1 and the new -- I guess
6 what we came up with, the new fine will be a fine for a
7 thousand dollars. Thank you.

8 MR. HANANO: Thank you, Chair.

9 CHAIR U'U: Can I have a motion to adjourn?

10 MEMBER WILLIAMS: Motion.

11 MEMBER HELM: Second.

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

13 (Response.)

14 CHAIR U'U: (Gavel.) All right. Thank you.

15 (The proceedings were adjourned at 10:15 a.m.)

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