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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 9:08 a.m., on July 11th, 2019.

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
- Allan Almeida, Jr., Member

Staff present:

- Ed Kushi, First Deputy Corporation Counsel
- Gerald Enriques, Deputy Prosecuting Attorney
- Glenn Mukai, Director
- Georgette Tyau, Deputy Director
- Maria Khangsengsing, Secretary to Boards/Commissions

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JULY 11TH, 2019; 9:08 A.M.

WAILUKU, MAUI, HAWAII

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CHAIR U'U: (Gavel.) The meeting of the liquor control adjudication board is now called to order. Will the board members and staff please introduce yourselves, starting with our commission secretary.

MS. KHANGSENGSING: Maria Khangsengsing, department of liquor control.

MEMBER WILLIAMS: Jason Williams, Wailuku.

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

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

VICE CHAIR HELM: Zach Helm, Molokai.

MEMBER NASCIMENTO: Herman Nascimento, Makawao.

MEMBER ALMEIDA: Allan Almeida, Wailuku.

DIRECTOR MUKAI: Glenn Mukai, liquor control.

DEPUTY DIRECTOR TYAU: Georgette Tyau, liquor control.

PROSECUTOR ENRIQUES: Gerald Enriques, prosecutor's office.

CHAIR U'U: Thank you. Good morning, everyone. We will now hear Complaint and Accusation No. 2018-32 against PGP Entertainment Limited Liability Company doing business as Lava Rock Bar & Grill.

Could the -- will the respondent or his

1 representatives please step forward and state your names.

2 (No response.)

3 MEMBER NASCIMENTO: Nobody here?

4 CHAIR U'U: Nobody here?

5 DIRECTOR MUKAI: The licensee has not shown up.

6 MR. KUSHI: What?

7 DIRECTOR MUKAI: The licensee was informed, was
8 served, but failed to appear.

9 MS. KHANGSENGSING: I called their number and you
10 can't leave a message. There's no recording, you can't record
11 a message, and nobody answered.

12 CHAIR U'U: So at the time let's have a moment of
13 silence.

14 (Laughter.)

15 DIRECTOR MUKAI: Well, pursuant to Section
16 08-102-92, the board can proceed.

17 CHAIR U'U: Okay. So, good. Does the board want to
18 proceed?

19 MEMBER NASCIMENTO: Yeah, we do.

20 MR. KUSHI: Chair, for the record, do you have
21 any -- any written documentation or a copy of a letter that
22 was sent to him?

23 DIRECTOR MUKAI: Yes. (Handing.) And also this.
24 (Handing.)

25 MR. KUSHI: Mr. Chair, for the record, what the

1 director has shown us was a form called "Acknowledgment and
2 Alternative Answers to the Charges" and it does state it's
3 signed by Pablo Santiensanio, I guess it's the licensee's
4 representative, and the stipulation -- they stipulated the box
5 where it says, "Stipulation and waiver. Request for
6 information or hearing. No contest plea." They also -- on
7 the notice it does state today's date, nine o'clock at this
8 place for the hearing. So based on the -- based on this,
9 Mr. Chair, I would say you're -- since they're no show, you're
10 entitled to proceed; however, when the prosecution does
11 present its case, please enter this into evidence as Exhibit 1
12 or whatever you may have.

13 MEMBER WILLIAMS: Just so I understand, so they
14 pleaded no contest?

15 MR. KUSHI: Correct.

16 MEMBER WILLIAMS: Okay.

17 CHAIR U'U: Okay. So having heard all of that and
18 understanding that they're pleading no contest, we'll move
19 forward with the meeting.

20 So at the time I guess I'll move on to --

21 MR. KUSHI: Have them present the case.

22 CHAIR U'U: Could you guys please present the case.

23 PROSECUTING ATTORNEY ENRIQUES: Yeah. On or about
24 August 11th, 2018 at approximately 12:33 a.m. Liquor Control
25 Officer Cullen Kawano and Liquor Control Trainee Marc

1 Velasquez conducted an inspection of the Lava Rock Bar & Grill
2 located at 1945 South Kihei Road in Kihei, Maui, Hawaii. This
3 inspection was conducted jointly with Officers Eric Grundy and
4 Murphy Aquino of the Maui Police Department, who remained
5 outside the premises to act as support, if requested.

6 After entering the premises at approximately
7 12:35 a.m., Trainee Velasquez alerted Officer Kawano to the
8 presence of a male patron, who was later identified as Marcus
9 Joshlin. Mr. Joshlin appeared to be sleeping or passed out.
10 Upon approaching Joshlin, both Trainee Velasquez and Officer
11 Kawano observed Joshlin to be slumped over in a chair with his
12 head hanging down and his hands in his lap.

13 Officer Kawano attempted to speak to Joshlin, but he
14 did not respond. Officer Kawano was forced to tap Joshlin and
15 shout close to him in order to get his attention. Once he
16 managed to get Joshlin's attention, Officer Kawano asked
17 Joshlin if he was okay.

18 In response, Joshlin smiled at Officer Kawano, gave
19 him a blank stare, then showed what appeared to be an "Okay"
20 sign to Officer Kawano by holding up his hand with his index
21 finger and thumb touching and his remaining fingers extended.

22 At this point Officer Kawano detected a strong odor
23 of liquor emanating from Joshlin. Officer Kawano told Joshlin
24 that he did not appear to be okay and asked if he had been
25 drinking that night.

1 In a mumbled and slurred voice, Joshlin appeared to
2 ask, quote, "I go home now?"

3 Officer Kawano asked Joshlin if he could see his ID.
4 Joshlin agreed and attempted to produce his ID from his
5 wallet; however, Joshlin had difficulty removing his wallet
6 from his front pocket and handed the following items to
7 Officer Kawano instead of his ID: a bank card, an American
8 Savings Bank information card, a Haleakala Park entry pass
9 card, a bails bond business card, and another credit card.

10 Officer Kawano then noticed Joshlin's ID located in
11 the cash section of his wallet and asked if he could see it.
12 Joshlin then began removing the cash from his wallet, making
13 it necessary for Officer Kawano to stop him and instruct him
14 on how to remove the ID from the wallet.

15 During the interaction with Joshlin Officer Kawano
16 noticed that Joshlin had red bloodshot watery eyes, flushed
17 red facial features, heavily slurred speech, slow physical
18 movements, and was very slow in his responses.

19 Additionally, various employees attempted to remove
20 Joshlin from the premises while Officer Kawano was speaking to
21 him during the investigation. Ultimately, Joshlin was able to
22 contact a friend to take him home and the investigation
23 continued.

24 After multiple attempts to locate the manager on
25 duty, Officer Kawano and Trainee Velasquez made contact with

1 manager Michaela Espino. They informed her of their
2 interaction with Joshlin and their observations of his
3 intoxicated state, including the fact that he had been passed
4 out on a stool. Espino said that she had observed Joshlin at
5 10:45 p.m. attempting to order a beer at the bar; however,
6 Joshlin appeared to be heavily intoxicated to Espino and she
7 ordered security to remove him from the premises.

8 When Officer Kawano told Espino that:

9 1) Joshlin had said that he had been drinking beer
10 within Lava Rock and his last drink was 15 minutes before
11 speaking to Officer Kawano, and

12 2) Joshlin was observed to be on the premises after
13 12:30 a.m. while intoxicated.

14 Espino responded by saying that there was apparently
15 an issue communicating to security what needed to be done.

16 During this conversation Officer Kawano also asked
17 Espino to produce video, timesheets, and sales documents for
18 that night. Espino said that she did not have access to that
19 information, but would pass the request along to the owners.

20 On or about August 17th, 2018, six days after his
21 initial request for records to Espino, Officer Kawano
22 contacted Pablo Santiensanio by email about the status of the
23 records. Santiensanio, who was later determined to be the
24 owner of Lava Rock, told Kawano that he would provide all of
25 the information requested, but was unable to provide video

1 footage because their system did not record more than one
2 day's worth of information -- excuse me, footage.
3 Santiensanio further explained that when he attempted to
4 retrieve the footage on August 13th, 2018, which was two days
5 after the footage request was submitted, it was not available.

6 Officer Kawano informed Santiensanio that during
7 previous contacts with this licensee video footage was
8 available a few days after the request was made or was at
9 least downloaded a few days after a given incident.

10 In response Santiensanio told Officer Kawano that:

11 He did not know why the video availability had
12 shifted to one day.

13 He had taken over less than a month ago.

14 The previous owners were no longer in charge.

15 He was unaware of the one-day limitation when Espino
16 relayed his -- the footage request to him on August 11th,
17 2018.

18 And he didn't know if the employees were aware of
19 the video system or the ownership change.

20 Santiensanio also said that the camera issues would
21 be solved that week.

22 On or about August 17th, 2018 at approximately 1:17
23 a.m., Officer Kawano and Trainee Velasquez entered the
24 licensed premises and issued a notice of violation for the
25 August 11th, 2018 incident. At this point they spoke with

1 Moses Kahae, the manager on duty, regarding this incident.
2 Notably, Kahae told Trainee Velasquez that he was on the
3 premises dealing with a different intoxicated patient --
4 patron at the time of the incident and that he keeps telling
5 the bartenders to not serve people so much liquor.

6 After reviewing -- receiving and reviewing the
7 requested records, Officer Kawano determined that the
8 timesheet did not list the legal first and last names of all
9 employees. Notably, this is the second such incident with
10 this licensee. Officer Kawano also determined that
11 Santiensanio did not have an Employee Approved By the Director
12 Certification card.

13 CHAIR U'U: Thank you.

14 Any questions of members, by the board? Questions?

15 MEMBER WILLIAMS: No.

16 CHAIR U'U: I've got a question. Is it common that
17 the records doesn't reflect the actual names of the people
18 when they request for the information? It seems common, I
19 don't know why, but, you know, the workers, their real names
20 doesn't match up to the names on the timecards.

21 DIRECTOR MUKAI: Pursuant to the rules, they have to
22 list their full name, not nicknames.

23 CHAIR U'U: Okay.

24 Any questions?

25 (No response.)

1 CHAIR U'U: Seeing none, director's argument as to a
2 penalty, please.

3 PROSECUTOR ENRIQUES: The original license for this
4 licensee was issued back in July 2017. Between October 2017
5 and April of 2018 administrative notices of written caution
6 appear to have been issued on four separate incidents,
7 although none of those warnings appear to be directly related
8 to the violations here. However, there are four prior
9 convictions relating to one incident in November 2017, one of
10 which was the same timesheet violation that occurred here.

11 In light of this, we are recommending the following:

12 For Count 1, a \$2,000 fine with \$1,000 suspended for
13 one year on the condition that no further convictions for the
14 same offense occur during that one-year period.

15 Count 2, a \$500 fine with \$250 suspended for one
16 year on the condition that no further convictions for the same
17 offense occur during that one-year period.

18 Count 3, a \$500 fine with \$250 suspended for one
19 year on the condition that no further convictions for the same
20 offense occur during that one-year period.

21 Count 4, a \$500 fine with \$250 suspended for one
22 year on the condition that no further convictions for the same
23 offense occur during that one-year period.

24 Count 5, a \$500 fine with \$300 suspended for
25 suspended for one year on the condition that no further

1 convictions for the same offense occur during that one-year
2 period.

3 And for Count 6, a \$100 fine.

4 CHAIR U'U: To go over so I've got my notes correct,
5 Count 1 will be a \$2,000 with \$1,000 suspended.

6 PROSECUTOR ENRIQUES: Correct.

7 CHAIR U'U: Count 2 will be \$500 with \$250
8 suspended.

9 PROSECUTOR ENRIQUES: Correct.

10 CHAIR U'U: Count 3, \$500 with 250 suspended.

11 PROSECUTOR ENRIQUES: Correct.

12 CHAIR U'U: Count 4, 500 with \$250 suspended.

13 PROSECUTOR ENRIQUES: Correct.

14 CHAIR U'U: Count 5, 500 with 300 suspended.

15 PROSECUTOR ENRIQUES: Correct.

16 CHAIR U'U: And Count 6, a \$100 fine.

17 PROSECUTOR ENRIQUES: Yes.

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

19 (No response.)

20 CHAIR U'U: At this time I'd like to take this
21 matter into consideration. I would entertain a motion to
22 go --

23 Question.

24 MR. KUSHI: Before you do, make a motion to enter
25 these two into evidence.

1 PROSECUTOR ENRIQUES: Oh, I'm sorry.

2 MR. KUSHI: Department's Exhibit No. 1, which is
3 entitled "Acknowledgment and Alternative Answers to the
4 Charges." Defendant's Exhibit -- Department's Exhibit No. 2,
5 which is entitled "Statutory" -- or "Complaint and Accusation"
6 in this matter.

7 PROSECUTOR ENRIQUES: I would move to enter those
8 two documents into evidence.

9 MR. KUSHI: Received.

10 CHAIR U'U: Okay. Thank you.

11 Do we need a second for that?

12 MR. KUSHI: No. Just...

13 CHAIR U'U: Okay. Again, the board will take this
14 matter into consideration. I will entertain a motion to go
15 into deliberation.

16 MEMBER WILLIAMS: So moved.

17 MEMBER NASCIMENTO: Second.

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

19 (Response.)

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

21 (Pause in Proceedings: 9:21 a.m.-9:29 a.m.)

22 CHAIR U'U: (Gavel.) The board is now back in open
23 session. At this time we will accept the plea on -- to no
24 contest and find the -- and find the defendant guilty of six
25 charges. I'll go over the fines right now.

1 On Count 1, a \$2,000 fine with \$1,000 suspended
2 provided there's no conviction of the same offense for a
3 period of one year.

4 On Count 2, a \$500 fine with \$250 suspended provided
5 there's no conviction of the same offense for a period of one
6 year.

7 On Count 3, a \$500 fine with \$250 being suspended
8 providing there is no conviction of the same offense for a
9 period of one year.

10 Count 4, a \$500 fine, \$250 suspension, again
11 providing there is no conviction of the same offense for a
12 period of one year.

13 Count 5, a \$500 fine, \$300 suspended provided
14 there's no conviction of the same offense for a period of one
15 year.

16 And on Count 6, a \$100 fine.

17 MR. KUSHI: Mr. Chair.

18 CHAIR U'U: Yes.

19 MR. KUSHI: Would you clarify Count 5 again.

20 CHAIR U'U: Count 5, \$500 fine with \$300 --

21 MR. KUSHI: \$300.

22 CHAIR U'U: -- of that being suspended.

23 Are there any questions?

24 (No response.)

25 CHAIR U'U: I would -- I would say the department

1 will notify you when payment is due, but I'd be talking to
2 myself, so --

3 (Laughter.)

4 CHAIR U'U: -- it's up to you guys.

5 Anything else?

6 DIRECTOR MUKAI: No. That is all we have.

7 CHAIR U'U: Anything else, Ed?

8 MR. KUSHI: Oh.

9 CHAIR U'U: Maria.

10 MR. KUSHI: Maria, mark those two documents as
11 Exhibits 1 and 2 and put it in the file.

12 MS. KHANGSENGSING: Okay.

13 CHAIR U'U: At this time I'll take a motion to
14 adjourn.

15 VICE CHAIRPERSON HELM: So moved.

16 MEMBER WILLIAMS: Second.

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

18 (Response.)

19 CHAIR U'U: All those opposed?

20 (No response.)

21 CHAIR U'U: Motion adjourned. (Gavel.)

22 (The proceedings were adjourned at 9:31 a.m.)
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C E R T I F I C A T E

1
2 STATE OF HAWAII)
3 COUNTY OF MAUI) SS.
4

5 I, Sandra J. Gran, Certified Shorthand Reporter for
6 the State of Hawaii, hereby certify that on July 11th, 2019,
7 at 9:08 a.m. the proceedings was taken down by me in machine
8 shorthand and was thereafter reduced to typewritten form under
9 my supervision; that the foregoing represents, to the best of
10 my ability, a true and correct transcript of the proceedings
11 had in the foregoing matter.

12
13 I further certify that I am not an attorney for any
14 of the parties hereto, nor in any way concerned with the
15 cause.

16
17 DATED this 26th day of July, 2019, in Maui, Hawaii.
18
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20

21 

22 _____
23 Sandra J. Gran, RPR
24 Hawaii CSR 424
25