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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 9:05, on November 7th, 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
- Lahela Aiwohi, Member (in at 9:08)
- Candace Ariaga, Member
- Gwen Ueoka, Member
- Allan Almeida, Jr., Member

Staff present:

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

00:04:04 1 November 7th, 2019; 9:05 a.m.

00:04:18 2 WAILUKU, MAUI, HAWAII

00:04:27 3 -oOo-

00:54:43 4 CHAIR U'U: (Gavel.) Aloha and good morning,  
00:54:47 5 everyone. The meeting of the liquor control adjudication  
00:54:52 6 board is now called to order. I would like to introduce  
00:54:56 7 ourselves starting with our commission secretary.

00:54:59 8 MS. KHANGSENGSING: Maria Khangsensing, department  
00:54:59 9 of liquor control.

00:55:01 10 MEMBER ALMEIDA: Allan Almeida, Wailuku.

00:55:03 11 MEMBER UEOKA: Gwen Ueoka, Wailuku.

00:55:05 12 MR. KUSHI: Ed Kushi, corp counsel's office.

00:55:08 13 CHAIR U'U: Bruce U'u, Paia.

00:55:14 14 VICE CHAIR HELM: Zach Helm, Molokai.

00:55:15 15 MEMBER NASCIMENTO: Herman Nascimento, Makawao.

00:55:15 16 MEMBER ARIAGA: Candace Ariaga, Lanai.

00:55:15 17 DIRECTOR MUKAI: Glenn Mukai, liquor control.

00:55:15 18 MR. ENRIQUES: Gerald Enriques, prosecutor's office.

00:55:20 19 CHAIR U'U: And I'd like to mention that Member  
00:55:21 20 Richard Bergson and Jason Williams are excused and we are  
00:55:25 21 waiting for Lahela Aiwohi.

00:55:28 22 Is there any changes in the agenda?

00:55:30 23 MR. ENRIQUES: Not that I'm aware of.

00:55:33 24 DIRECTOR MUKAI: The prosecutor will address it when  
00:55:40 25 we reach the case.

00:55:42 1 CHAIR U'U: Okay, okay. We will hear -- we will now  
00:55:44 2 hear Complaint and Accusation No. 2019-02, Aumakua Holdings,  
00:55:53 3 Incorporated doing business as Maui Brewing Company.

00:55:57 4 Will the respondent or its representative please  
00:56:01 5 step forward, state your names and in what capacity you  
00:56:05 6 represent the respondent.

00:56:05 7 MR. UEOKA: Good morning, Mr. Chair and Members of  
00:56:06 8 the Board. Robert Ueoka on behalf of Maui Brewing Company.  
00:56:09 9 Present to my right is Mr. Garrett Marrero, he is with Maui  
00:56:15 10 Brewing Company.

00:56:15 11 CHAIR U'U: Thank you. At this time you have the  
00:56:16 12 option of having the charges publicly read or you can waive  
00:56:20 13 the reading.

00:56:22 14 MR. UEOKA: We'll waive reading of the charge and  
00:56:23 15 plead no contest.

00:56:24 16 CHAIR U'U: Again, state your last name again.

00:56:24 17 MR. UEOKA: Ueoka, U-E-O-K-A.

00:56:28 18 CHAIR U'U: Mr. Ueoka, for the record, do you  
00:56:29 19 represent the respondent involved?

00:56:32 20 MR. UEOKA: Yes.

00:56:32 21 CHAIR U'U: So you are legal counsel?

00:56:34 22 MR. UEOKA: I am legal counsel and authorization.

00:56:37 23 CHAIR U'U: Do you understand the charges against  
00:56:37 24 you?

00:56:40 25 MR. UEOKA: Yes, I do.

00:56:41 1 CHAIR U'U: What is your plea to each count?

00:56:43 2 MR. UEOKA: Our plea is a plea of no contest.

00:56:46 3 MR. KUSHI: To all of them?

00:56:47 4 MR. UEOKA: Well, actually, we did a discussion with

00:56:49 5 the prosecutor, so we're pleading no contest today to Count 1

00:56:51 6 and Count 4. I believe Count 2 and Count 3 will be dismissed.

00:56:56 7 MR. ENRIQUES: That's correct, that's the agreement.

00:56:56 8 And, sorry, I didn't understand what you were talking about of

00:56:58 9 a change to the agenda. Yes, this would be a change of plea

00:57:01 10 pursuant to plea agreement. In addition to the, I guess,

00:57:04 11 aforementioned conditions of guilty or no contest to Count 1

00:57:08 12 and 4, we would dismiss with prejudice Counts 2 and 3 and we

00:57:12 13 do have a sentencing agreement that I can go into at that

00:57:14 14 time.

00:57:14 15 CHAIR U'U: Okay. Can we go over the counts first,

00:57:16 16 take your time and go over the counts of what was the changes,

00:57:20 17 please.

00:57:20 18 MR. ENRIQUES: Sure. Basically, the agreement is as

00:57:23 19 follows: The licensee will enter a plea of guilty or no

00:57:27 20 contest to Count 1, Prohibitions Section 8-101 --

00:57:31 21 CHAIR U'U: So Count 1, again, no contest or what is

00:57:36 22 Count 1?

00:57:36 23 MR. ENRIQUES: No contest.

00:57:38 24 CHAIR U'U: Okay. Count 2 would be?

00:57:39 25 MR. ENRIQUES: Count 4 would be the next one, that

00:57:41 1 would be no contest to conduct of employees.

00:57:45 2 CHAIR U'U: And what would be Count 2?

00:57:47 3 MR. ENRIQUES: Count -- oh, I'm sorry. We would  
00:57:50 4 dismiss with prejudice Counts 2 and 3.

00:57:53 5 CHAIR U'U: Counts 2 and 3. Thank you. Sorry.

00:57:56 6 Any questions by the board?

00:57:56 7 MR. UEOKA: Yes.

00:57:58 8 CHAIR U'U: So again, Count 1, Count 4 pleading no  
00:58:01 9 contest, and Count 2 and Count 3 is dismissed.

00:58:05 10 (Member Aiwohi entered the room.)

00:58:07 11 CHAIR U'U: Good morning, Lahela.

00:58:12 12 MEMBER AIWOHI: Good morning.

00:58:13 13 CHAIR U'U: Do you understand the violations the  
00:58:17 14 department of liquor control alleges against you.

00:58:20 15 MR. UEOKA: Yes, I do.

00:58:21 16 CHAIR U'U: Do you understand that you have the  
00:58:23 17 right to plead not guilty?

00:58:23 18 (No response.)

00:58:29 19 CHAIR U'U: I take that back, that's wrong. Okay.  
00:58:32 20 Wrong one, brah. You guys are on it, good job. (Pause -  
00:58:35 21 referring.)

00:58:35 22 Okay. Do you understand that by pleading no  
00:58:51 23 contest, you waive the right to a hearing in which you could  
00:58:55 24 present evidence and question witnesses on your behalf?

00:58:58 25 MR. UEOKA: Yes.

00:58:59 1 CHAIR U'U: Is your plea of no contest voluntary and  
00:59:02 2 not the result of force, threats, or of promises apart from  
00:59:06 3 any plea agreement?

00:59:07 4 MR. UEOKA: Yes.

00:59:08 5 CHAIR U'U: Do you understand that on each count if  
00:59:11 6 the board accepts your plea of no contest, you would be found  
00:59:14 7 guilty and that the board may issue a reprimand or assess and  
00:59:19 8 collect a penalty of up to \$2,000 or revoke any license at any  
00:59:23 9 time or suspend the right of the licensee to use the  
00:59:26 10 licensee's license?

00:59:28 11 MR. UEOKA: Yes.

00:59:29 12 CHAIR U'U: Do you still wish to plead no contest?

00:59:31 13 MR. UEOKA: Yes.

00:59:32 14 CHAIR U'U: The board hereby finds that the licensee  
00:59:35 15 has entered a knowing and voluntary plea of no contest. The  
00:59:38 16 board accepts your plea and finds you guilty of Counts 1 and 2  
00:59:45 17 reflected in Complaint and -- no, 1 and 4 reflected in  
00:59:47 18 Complaint and Accusation No. 2019-02.

00:59:52 19 Will the department present a summary of the case.

00:59:56 20 MR. ENRIQUES: On January 20th, 2019, at  
01:00:00 21 approximately 12:56 in the morning, Maui Police Department  
01:00:03 22 Officer Mitchell Navarro and other officers responded to a  
01:00:08 23 complaint of an employee-to-employee verbal argument at the  
01:00:11 24 licensed premises of Aumakua Holdings, Incorporated doing  
01:00:14 25 business as Maui Brewing Company located at 605 Lipoa Parkway

01:00:19 1 in Kihei.

01:00:19 2           Upon arrival, Officer Navarro spoke with Maui  
01:00:25 3 Brewing Company manager Miles Kreisberg near the entrance to  
01:00:26 4 the parking lot. Kreisberg made the following statements:

01:00:28 5           During closing, he got into a verbal argument with  
01:00:32 6 employ Max Caraisco over work matters, Caraisco became very  
01:00:37 7 irate with him and began kicking and slamming things within  
01:00:40 8 the restaurant. At one point, Caraisco shoved him.

01:00:43 9           He had observed Caraisco with an open container  
01:00:46 10 located near the bar, but was unsure of exactly how many  
01:00:50 11 drinks Caraisco had consumed.

01:00:52 12           Caraisco had left the premises at that point, but  
01:00:54 13 was still within the area because his vehicle was still in the  
01:00:57 14 parking lot.

01:00:59 15           Kreisberg called the police before matters  
01:01:01 16 escalated, and wanted a police back -- escort back into the  
01:01:04 17 restaurant.

01:01:05 18           While being escorted back into the restaurant,  
01:01:08 19 officers observed a shirtless male, later identified as  
01:01:11 20 Caraisco, lying on the grass in front of the restaurant.  
01:01:14 21 Caraisco was observed to be highly intoxicated. He was  
01:01:17 22 unresponsive to flashlights shining on his face and had the  
01:01:22 23 strong odor of liquor coming from his breath and body. It  
01:01:26 24 appeared that he was incoherent and would not respond to  
01:01:29 25 verbal communication and as a result, medics were requested.



01:01:31 1                   When medics arrived on the scene and began to  
01:01:35 2                   examine Caraisco, Officer Navarro observed him continuously  
01:01:38 3                   reach out and grab one of the medic's arms and legs. Caraisco  
01:01:41 4                   was also yelling, swearing, and exhibiting aggressive behavior  
01:01:46 5                   towards medical personnel, such as swinging his arms around.  
01:01:50 6                   The medics eventually determined that he was highly  
01:01:51 7                   intoxicated, but otherwise fine.

01:01:55 8                   Officers intervened and asked Caraisco numerous  
01:01:59 9                   times to cooperate with the medics. He refused and at one  
01:02:03 10                  point grabbed an officer's leg and attempted to pull the  
01:02:04 11                  officer to the ground. When officers attempted to place  
01:02:08 12                  Caraisco under arrest, he resisted their efforts by tucking  
01:02:11 13                  his left arm under his body and tensing up. While police were  
01:02:14 14                  attempting to get Caraisco into a police vehicle, he remained  
01:02:19 15                  limp and refused to walk on his own or be assisted in walking.  
01:02:22 16                  Eventually, he had to be dragged by his arms and carried. He  
01:02:26 17                  was also uncooperative while police were attempting to get him  
01:02:29 18                  into the vehicle, requiring an officer to go to the opposite  
01:02:34 19                  side of the vehicle and pull him inside.

01:02:35 20                  As part of the department's investigation, Liquor  
01:02:40 21                  Control Officer Kayle Matsushima reviewed records and spoke  
01:02:42 22                  with witnesses, including Kreisberg, General Manager Tony Ren,  
01:02:47 23                  and employee Madison Phillips. Officer Matsushima attempted  
01:02:50 24                  to speak with Caraisco on multiple occasions, but was unable  
01:02:55 25                  to do so.

01:02:56 1 The following additional and relevant information  
01:02:58 2 was obtained during the investigation:

01:02:59 3 Caraisco had clocked in as a dinner bartender at  
01:03:03 4 approximately 4:14 p.m. on January 19th, 2019, and had clocked  
01:03:08 5 out at 12:01 a.m. on January 20th, 2019.

01:03:14 6 Caraisco had been drinking prior to the end of his  
01:03:17 7 shift, although none of the witnesses directly observed, or  
01:03:20 8 would admit that they directly observed, Caraisco drinking  
01:03:23 9 during the shift.

01:03:26 10 Kreisberg estimated he checked on his employees 30  
01:03:28 11 times during the shift. On the night in question, Kreisberg  
01:03:31 12 did not notice Caraisco asking -- acting as if he was  
01:03:35 13 intoxicated or drinking until approximately 11:00 p.m., which  
01:03:39 14 was the establishment's closing time. At that time, Kreisberg  
01:03:39 15 noticed that -- or, excuse me, Kreisberg claimed that Caraisco  
01:03:47 16 exhibited slight signs of intoxication. Kreisberg further  
01:03:51 17 speculated that Caraisco had consumed most of the alcohol  
01:03:54 18 between 11:30 p.m. and 12:00 a.m.

01:03:58 19 At the end of the night, Caraisco became upset  
01:04:01 20 because he wanted to leave when his shift was over, but a  
01:04:04 21 computer problem was delaying him.

01:04:05 22 When Kreisberg informed Caraisco of the computer  
01:04:09 23 delay, Caraisco went into the kitchen and kicked a trash can,  
01:04:13 24 then left the premises.

01:04:13 25 At approximately 11:45 p.m., Caraisco came back

01:04:17 1 inside to finish his closing duties and Kreisberg went  
01:04:20 2 upstairs.

01:04:21 3 At approximately 12:00 a.m., Kreisberg came  
01:04:25 4 downstairs and found that Caraisco had removed his shirt and  
01:04:28 5 was banging items, including a keg, around.

01:04:31 6 Kreisberg got Caraisco to leave the premises because  
01:04:34 7 he was intoxicated and while doing so Caraisco lunged at him.

01:04:39 8 And Caraisco was terminated immediately as a result  
01:04:41 9 of the incident.

01:04:44 10 CHAIR U'U: Any questions by members of the board?

01:04:48 11 MEMBER ALMEIDA: I have one.

01:04:48 12 CHAIR U'U: Go ahead.

01:04:49 13 MEMBER ALMEIDA: What happened to Mr. Kreisberg?

01:04:52 14 MR. UEOKA: Kreisberg is the manager, Caraisco is  
01:04:56 15 the bartender.

01:04:56 16 MEMBER ALMEIDA: Okay. Caraisco.

01:04:56 17 MR. UEOKA: He is no longer working for the company.  
01:04:59 18 I think prosecutor has mentioned that he was terminated.

01:05:02 19 MR. ENRIQUES: Yes.

01:05:02 20 MEMBER ALMEIDA: Okay.

01:05:02 21 MR. UEOKA: He's no longer employed.

01:05:02 22 MEMBER ALMEIDA: All right. Thank you.

01:05:04 23 MR. UEOKA: Yeah.

01:05:04 24 CHAIR U'U: Okay. Mr. Ueoka, you have the  
01:05:06 25 opportunity to make a statement regarding this case. You may

01:05:10 1 also inform the board of any mitigating circumstances which  
01:05:13 2 may or may not apply to sentencing.

01:05:15 3 MR. UEOKA: Great. I just wanted to go over some of  
01:05:17 4 the facts that were mentioned by the prosecutor and then I'll  
01:05:20 5 go over some of the mitigation that we've done.

01:05:21 6 First of all, I wanted to stress that this is an  
01:05:23 7 employee and not a customer that consumed or allegedly  
01:05:26 8 consumed alcohol, so it was not a typical overservice  
01:05:29 9 situation where we served any alcohol to a customer. Also,  
01:05:33 10 that this occurred after closing, so there were no customers  
01:05:36 11 in the restaurant area at all.

01:05:38 12 Also, our manager, Mr. -- Kreisberg?

01:05:38 13 MR. MARRERA: Yes.

01:05:41 14 MR. UEOKA: Kreisberg. He acted properly and  
01:05:43 15 immediately called police, got Mr. Caraisco out of the  
01:05:46 16 premises, which is the main thing, and that's about when  
01:05:49 17 police were called and police handled it.

01:05:51 18 I also wanted to mention that I think there was a  
01:05:55 19 statement it was prior to the end of the shift that Caraisco,  
01:05:58 20 the bartender drank. If any drinking occurred, it did occur  
01:06:01 21 after -- after the place was closed and while they were --  
01:06:05 22 they were wrapping things up.

01:06:06 23 The reason why the employee, we understand, got  
01:06:08 24 upset is because the place is closed and then they're  
01:06:11 25 calculating tips and the bartender, Mr. Caraisco, wanted to

01:06:14 1 leave, so that's what kind of triggered him to get upset.  
01:06:17 2 We're not -- we're not really -- we're not sure if  
01:06:20 3 Mr. Caraisco actually consumed alcohol and it is totally  
01:06:24 4 against our policy to do so. And if he did that, we've been  
01:06:27 5 trained -- he's been trained to not do that at all.

01:06:30 6 So we feel like these are unfortunate circumstances,  
01:06:33 7 but we feel that we tried to act as immediately and due care  
01:06:37 8 as possible given the circumstances, very unfortunate  
01:06:41 9 circumstances, and police were called and police -- it was  
01:06:44 10 necessary.

01:06:44 11 As to the mitigation, I just wanted to mention some  
01:06:48 12 of the training that we have. We have online training. We  
01:06:50 13 make our employees take a test, a quiz, they have to get at  
01:06:53 14 least 90 percent to pass or they have to redo it. We also  
01:06:56 15 have them review the employee handbook. We quiz them on that  
01:06:59 16 as well. Again, 90 percent to pass on that. Bartenders and  
01:07:03 17 employees have responsible alcohol service training and they  
01:07:06 18 must -- they must not only know it, but they're gonna be  
01:07:09 19 tested on it.

01:07:11 20 After this incident, we installed an additional  
01:07:14 21 camera that shows -- a camera from the manager's office and  
01:07:17 22 shows the entire -- the grounds, so the entire dining area and  
01:07:21 23 the bartender area. So, of course, that doesn't eliminate the  
01:07:24 24 need to check, to come and check, but we did install an  
01:07:27 25 additional camera so if the manager has to do some things in

01:07:30 1 his office, he can still monitor not only the dining area, but  
01:07:34 2 also the bartender area.

01:07:35 3 We also have -- we have what's called alcohol  
01:07:37 4 strips. I actually have the box, if you need it. If we  
01:07:40 5 suspect that anybody's consuming alcohol while on duty, we  
01:07:44 6 actually take saliva -- we can take saliva samples and -- it's  
01:07:47 7 approved by the department of transportation, it's commonly  
01:07:50 8 done, and it's a measure that we can try and see if employees  
01:07:55 9 are actually consuming while on duty.

01:07:57 10 After this incident, we also had a manager-employee  
01:08:01 11 meeting to discuss the prohibition of consuming alcohol while  
01:08:04 12 on duty. In this matter, the person was -- may have been on  
01:08:07 13 the clock still, but, clearly, the restaurant was closed. We  
01:08:10 14 close down at 11:00 and this incident -- the consumption, if  
01:08:14 15 it occurred, was sometime between 11:00 and 12:00, but it  
01:08:17 16 wasn't -- it wasn't while any customers were in the  
01:08:19 17 restaurant.

01:08:23 18 CHAIR U'U: Are you done?

01:08:24 19 MR. UEOKA: Yes, I'm done.

01:08:25 20 CHAIR U'U: Okay. Questions by the board members?  
01:08:27 21 Commissioner Helm.

01:08:30 22 VICE CHAIR HELM: After he got terminated, I mean,  
01:08:33 23 how many years has Caraisco been employed by this company?

01:08:37 24 MR. MARRERO: Under a year.

01:08:39 25 MR. UEOKA: Under a year, yeah.

01:08:41 1 VICE CHAIR HELM: Okay. So if there's any employee  
01:08:47 2 drinking after the place is closed, you folks terminate?

01:08:55 3 MR. UEOKA: We have a zero -- zero tolerance policy,  
01:08:57 4 is it in the handbook, so they are terminated and understand  
01:09:00 5 they're gonna be terminated.

01:09:01 6 VICE CHAIR HELM: If they get caught.

01:09:02 7 MR. MARRERO: Well, whether or not -- yeah, whether  
01:09:03 8 or not this occurred, had we know he was drinking or suspected  
01:09:07 9 him drinking, that would've been handled in termination, for  
01:09:09 10 sure. We don't tolerate anything like that, so...

01:09:13 11 VICE CHAIR HELM: Thank you.

01:09:13 12 CHAIR U'U: Any more questions?

01:09:14 13 MEMBER ALMEIDA: About the testing strips, so this  
01:09:17 14 is -- you implemented that after this incident?

01:09:20 15 MR. UEOKA: I understand we did have it in place.

01:09:23 16 MEMBER ALMEIDA: In place, okay. So, yeah, the  
01:09:24 17 manager could've said -- yeah.

01:09:25 18 MR. UEOKA: This one happened a little bit too fast  
01:09:27 19 for us to do that.

01:09:27 20 MEMBER AIWOHI: But he caught it --

01:09:29 21 MEMBER ALMEIDA: He caught it.

01:09:29 22 MEMBER AIWOHI: -- right away.

01:09:29 23 MR. UEOKA: Exactly.

01:09:29 24 MEMBER ALMEIDA: Which is great, yeah.

01:09:31 25 MR. MARRERO: It seem that it happened very

01:09:32 1 quickly --

01:09:32 2 MEMBER AIWOHI: Yeah.

01:09:32 3 MR. MARRERO: -- after closing that -- yeah, there's  
01:09:35 4 a lot of theories on how quickly someone can get intoxicated  
01:09:40 5 and drink, but, yeah, it was not something that was throughout  
01:09:42 6 the entire evening building. Had that been the case, our  
01:09:47 7 manager would've stepped in and tested him, removed and  
01:09:48 8 terminated.

01:09:48 9 MEMBER ALMEIDA: It seems like he did the correct  
01:09:51 10 immediate action.

01:09:51 11 MEMBER AIWOHI: Yeah.

01:09:52 12 MR. MARRERO: Absolutely. That's our job.

01:09:54 13 MEMBER ALMEIDA: Yeah. Thank you.

01:09:55 14 CHAIR U'U: Any more questions by the board?

01:09:58 15 I like the fact that you guys taking some good  
01:10:01 16 measures like the camera and -- I guess you've still gotta go  
01:10:04 17 out there and check, but, you know, so far I've never heard  
01:10:07 18 anyone come before the board and go through the lengths of  
01:10:10 19 what you guys are attempting to do right now, so...

01:10:13 20 MR. KUSHI: Mr. Chair, if I may, questions to the  
01:10:15 21 department and the prosecutor for myself, as well for the  
01:10:19 22 board's information, because this has come up before. You  
01:10:22 23 said this employee clocked out at 11:01?

01:10:31 24 MR. MARRERO: 12:01.

01:10:28 25 MR. ENRIQUES: 12:01.



01:10:31 1 MR. UEOKA: 12:01.

01:10:30 2 MR. KUSHI: 12:01?

01:10:32 3 MR. UEOKA: Yeah.

01:10:32 4 MEMBER ALMEIDA: Clocked in at 4:14 that day, the  
01:10:35 5 19th.

01:10:35 6 MR. KUSHI: But then he was drinking before that?

01:10:38 7 MR. ENRIQUES: Yes.

01:10:39 8 MR. KUSHI: Again, they say they closed to the  
01:10:41 9 public at 11:00.

01:10:44 10 MR. ENRIQUES: Yes.

01:10:45 11 MR. KUSHI: But then still, the rule -- the rules  
01:10:47 12 prohibited any drinking by employees. It doesn't matter when  
01:10:50 13 the doors close; right? It's when the premises close for  
01:10:54 14 business; right?

01:10:54 15 MR. ENRIQUES: That's -- that's correct. And I  
01:11:05 16 think, to my recollection, the -- the rule involves closed to  
01:11:12 17 the -- the fact the establishment is closed doesn't mean that  
01:11:15 18 it's closed for the purposes of enforcement, it's just that  
01:11:20 19 it's more of a practical thing on the restaurant side. Like  
01:11:23 20 if they are closed, they can close their doors, but if they're  
01:11:26 21 serving, they're technically still open, this is what I'm  
01:11:29 22 trying to say.

01:11:31 23 MR. KUSHI: So their only way to check if an  
01:11:32 24 employee is drinking is to look at their time sheets, then?

01:11:35 25 MR. ENRIQUES: Partially. Check if they're

01:11:40 1 drinking?

01:11:40 2 MR. KUSHI: I mean, let's say, you know, if he's --

01:11:45 3 if he's intoxicated at 12:15 a.m., but he clocks out at

01:11:48 4 12:01 --

01:11:48 5 MR. ENRIQUES: Oh, I see.

01:11:49 6 MR. KUSHI: -- he's not supposed to be there.

01:11:51 7 MR. ENRIQUES: Right.

01:11:52 8 MR. KUSHI: Well, anyway, I think this has come up

01:11:56 9 before, yeah, whether or not, you know, your doors are closed,

01:12:00 10 but they're doing the paperwork and having a drink and the

01:12:03 11 inspector sees them.

01:12:07 12 MR. ENRIQUES: It's still enforceable, because

01:12:09 13 they're still -- if they're serving, they're open for the

01:12:11 14 purposes of enforcement of these statutes.

01:12:15 15 CHAIR U'U: Any more questions by the board members?

01:12:18 16 MR. KUSHI: Yeah, Chair, I have one, one more.

01:12:19 17 CHAIR U'U: Go ahead. Go ahead, Mr. Kushi.

01:12:22 18 MR. KUSHI: The policemen came, yeah, and they tried

01:12:24 19 to wrestle with him?

01:12:27 20 MR. ENRIQUES: They were gonna place him under

01:12:28 21 arrest, if I recall, for disorderly conduct.

01:12:30 22 MR. KUSHI: Disorderly conduct?

01:12:32 23 MR. ENRIQUES: Yes.

01:12:32 24 MR. KUSHI: Not DUI?

01:12:33 25 MR. ENRIQUES: No. He wasn't -- as far as I'm aware

01:12:34 1 of from these reports, he wasn't driving.

01:12:40 2 CHAIR U'U: Any more questions?

01:12:44 3 MR. KUSHI: No.

01:12:45 4 CHAIR U'U: Seeing none, at this time I'm going to  
01:12:45 5 have the director's argument as to penalty.

01:12:47 6 MR. ENRIQUES: This license was issued in March  
01:12:52 7 2018, the licensee has no prior history of violations or  
01:12:56 8 warnings related to this type of incident. Based on that, we  
01:12:59 9 are requesting the following per the plea agreement:

01:13:03 10 Count 1, a \$2,000 with \$1,000 suspended for one year  
01:13:09 11 on the condition that another violation of the same or similar  
01:13:12 12 nature does not occur within that year.

01:13:12 13 Count 4, a \$500 fine with \$250 suspended for one  
01:13:18 14 year on the condition that another violation of the same or  
01:13:22 15 similar nature does not occur within that year.

01:13:22 16 VICE CHAIR HELM: You said \$250 suspended?

01:13:26 17 MR. ENRIQUES: Yes.

01:13:26 18 CHAIR U'U: Questions from the board for clarity?

01:13:26 19 (No response.)

01:13:29 20 CHAIR U'U: Seeing none, this board will take this  
01:13:31 21 matter into consideration. I'll entertain a motion to go into  
01:13:36 22 deliberation.

01:13:36 23 VICE CHAIR HELM: So move.

01:13:37 24 CHAIR U'U: Second?

01:13:37 25 MEMBER ALMEIDA: Second.

01:13:38 1 CHAIR U'U: All those in favor?

01:13:38 2 (Response.)

01:13:40 3 CHAIR U'U: (Gavel.)

01:13:41 4 (Pause in Proceedings: 9:24 a.m.-9:31 a.m.)

01:21:18 5 CHAIR U'U: (Gavel.) The board is now back in

01:21:24 6 session. After a careful deliberation, the board has assessed

01:21:29 7 the fines. And by the way, I'll just take note, I like the

01:21:33 8 fact that you guys taking the proactive approach moving

01:21:36 9 forward, personally.

01:21:36 10 MR. MARRERO: Thank you.

01:21:41 11 CHAIR U'U: And I think it was shared by the

01:21:39 12 commissioners here.

01:21:43 13 For Count 1, the board has assessed a penalty of

01:21:43 14 \$2,000 with \$1,000 of that being suspended provided there is

01:21:48 15 no conviction for the same offense for a period of one year.

01:21:51 16 And on Count 4, a \$500 fine with \$250 of that being

01:21:55 17 suspended, again, provided there is no conviction for the same

01:21:59 18 offense for the period of one year.

01:22:02 19 The department will notify you when payment is due

01:22:06 20 and thank you for your time.

01:22:06 21 MR. UEOKA: Thank you very much.

01:22:11 22 MEMBER ALMEIDA: Thank you.

01:22:09 23 MR. MARRERO: Thank you.

01:22:10 24 CHAIR U'U: Aloha.

01:22:14 25 We will now hear Complaint and -- by the way, does

01:22:30 1 anybody need a break?

01:22:31 2 MEMBERS: No.

01:22:31 3 MEMBER ALMEIDA: Real quick, just the restroom.

01:22:34 4 CHAIR U'U: (Gavel.) Glad I asked.

01:22:38 5 (Pause in Proceedings: 9:32 a.m.-9:37 a.m.)

01:27:13 6 CHAIR U'U: (Gavel.) The board is now back in

01:27:18 7 session. We will now hear Complaint and Accusation

01:27:21 8 No. 2019-04 against -- against Minit Stop.

01:27:31 9 Thank you for stepping forward and could you guys

01:27:35 10 please state your names and in what capacity you represent the

01:27:38 11 respondent.

01:27:38 12 MS. TSUKIYAMA: Good morning. My name is Kristine

01:27:42 13 Tsukiyama, I'm the attorney representing Minit Stop. And with

01:27:45 14 me this morning is John Miyabuchi, he is the vice president of

01:27:49 15 retail operations and the general manager for Minit Stop.

01:27:53 16 CHAIR U'U: Thank you. At this time you have the

01:27:55 17 option of having the charges publicly read or you can waive

01:27:57 18 the reading. What would be your preference?

01:27:58 19 MS. TSUKIYAMA: We'll waive the reading.

01:28:01 20 CHAIR U'U: Ms. Tsukiyama, for the record, do you

01:28:05 21 represent the respondent involved?

01:28:07 22 MS. TSUKIYAMA: Yes.

01:28:08 23 CHAIR U'U: So you are legal counsel?

01:28:09 24 MS. TSUKIYAMA: Yes.

01:28:10 25 CHAIR U'U: Do you understand the charge against

01:28:12 1 you?

01:28:12 2 MS. TSUKIYAMA: Yes.

01:28:13 3 CHAIR U'U: What is your plea to the count?

01:28:15 4 MS. TSUKIYAMA: No contest.

01:28:23 5 CHAIR U'U: I gotta look for that again. (Pause -  
01:28:35 6 referring.) Hang on one second. I need some more paper.

01:28:39 7 VICE CHAIR HELM: Bruce.

01:28:50 8 CHAIR U'U: Yeah. (Pause - referring.) Hang on one  
01:28:56 9 second, I think the paper got ripped off. I guess it's last  
01:29:00 10 one, but I guess it --

01:29:04 11 MEMBER UEOKA: It's the second page in the packet.

01:29:06 12 CHAIR U'U: Yeah, I know.

01:29:08 13 VICE CHAIR HELM: Yeah, right here. It's the second  
01:29:11 14 page.

01:29:11 15 CHAIR U'U: Okay. You understand the -- do you  
01:29:13 16 understand the violations the department of liquor control  
01:29:16 17 alleges against you?

01:29:16 18 MS. TSUKIYAMA: Yes.

01:29:17 19 CHAIR U'U: Thank you for your patience, by the way.  
01:29:20 20 Do you understand that you have the right to plead  
01:29:22 21 not guilty?

01:29:23 22 MS. TSUKIYAMA: Yes.

01:29:24 23 CHAIR U'U: Do you understand that by pleading no  
01:29:26 24 contest, you waive the right to a hearing in which you could  
01:29:29 25 present evidence and question witnesses on your behalf?

01:29:31 1 MS. TSUKIYAMA: Yes.

01:29:32 2 CHAIR U'U: Is your plea of no contest voluntary and  
01:29:36 3 not the result of force, threats, or of promises apart from  
01:29:40 4 any plea agreement?

01:29:42 5 MS. TSUKIYAMA: Yes.

01:29:43 6 CHAIR U'U: Do you understand that on each count, if  
01:29:44 7 the board accepts your plea of no contest, you will be found  
01:29:48 8 guilty and that the board may issue a reprimand or assess and  
01:29:50 9 collect a penalty of up to \$2,000 or revoke any license at any  
01:29:55 10 time or suspend the right of the licensee to use the  
01:29:59 11 licensee's license?

01:30:00 12 MS. TSUKIYAMA: Yes.

01:30:01 13 CHAIR U'U: Do you still wish to plead no contest?

01:30:03 14 MS. TSUKIYAMA: Yes.

01:30:04 15 CHAIR U'U: The board hereby finds the licensee has  
01:30:08 16 entered a knowing and voluntary plea of no contest. The board  
01:30:13 17 accepts your plea and finds you guilty of Count 1 reflected in  
01:30:17 18 Complaint and Accusation No. 2019-04.

01:30:22 19 Will the department present a summary of the case,  
01:30:25 20 please.

01:30:25 21 MR. ENRIQUES: Thank you, Chair. You know, just for  
01:30:28 22 the record, there was a plea agreement in this matter. The  
01:30:31 23 only relevant part, I think, in this is that the department  
01:30:36 24 requests a \$500 fine with \$250 suspended for one year on the  
01:30:42 25 condition that another violation of the same or similar nature

01:30:48 1 did not occur -- does not occur within that year, but that's  
01:30:50 2 due to their entering a guilty or no contest plea to Count 1.  
01:30:55 3 That's the only agreement in this matter. So just for the  
01:30:56 4 record, because we mentioned during the plea of no contest.

01:31:00 5 CHAIR U'U: Okay.

01:31:00 6 MR. ENRIQUES: They agree. Excuse me.

01:31:02 7 All right. As to the facts of the case, on  
01:31:03 8 June 3rd, 2019, at approximately 10:30 p.m. Liquor Control  
01:31:09 9 Officer Andrew Carbonel contacted the Maui Police Department's  
01:31:13 10 Wailuku receiving desk as part of the department's policy to  
01:31:16 11 make checks with the MPD. Officer Carbonel was informed that  
01:31:21 12 an individual later identified as Edgar Perez was in custody  
01:31:24 13 for a liquor-related incident.

01:31:27 14 In summary, on June 2nd, 2019, at approximately  
01:31:31 15 5:54 p.m., MPD responded to reports of a sleeping driver  
01:31:34 16 located behind the wheel of a stalled vehicle in the middle of  
01:31:38 17 the road on Kaluanui Road in Haiku. Upon -- once MPD arrived  
01:31:41 18 on the scene, they observed Perez within the vehicle and to  
01:31:45 19 have various signs of intoxication, including slurred speech  
01:31:48 20 and the strong odor of liquor. Perez admitted to drinking,  
01:31:51 21 was unable to perform field sobriety maneuvers as instructed  
01:31:54 22 and demonstrated, and was placed under arrest.

01:31:56 23 On June 11th, 2019, Officer Carbonel contacted Perez  
01:32:03 24 via telephone. Perez admitted by a translator that he had  
01:32:08 25 consumed six beers before the police stop. Further admitting



01:32:11 1 that he had purchased the beer from the Makawao Minit Stop,  
01:32:13 2 but could not remember what time he'd arrived at the store.  
01:32:17 3 Perez was asked if he was drinking anywhere prior to going to  
01:32:19 4 Minit Stop, and responded by saying that he had finished work  
01:32:22 5 and went to Minit Stop to buy beer. He claimed that he had  
01:32:25 6 paid for the beer in cash, then went to a park to eat and  
01:32:28 7 drink the beer.

01:32:29 8 As part of the investigation into this matter, on  
01:32:31 9 June 19th, 2019, Officer Carbonel went to the Makawao Minit  
01:32:35 10 Stop and requested documents from employee Miriam Laanui.  
01:32:40 11 Officer Carbonel requested video, cash and credit card  
01:32:43 12 receipts for June 3rd, 2019, from between 3:00 p.m. to  
01:32:48 13 7:00 p.m., and also requested that the documents be provided  
01:32:52 14 by June 28th, 2019. Officer Carbonel provided Laanui with his  
01:32:58 15 department business card with the requested documents and  
01:33:01 16 deadline written on the back. Laanui said that she would  
01:33:04 17 contact her boss and let him know of the request.

01:33:06 18 On June 24th, 2019, at approximately 3:01 p.m., John  
01:33:11 19 Miyabuchi, the vice president of retail operations of Minit  
01:33:17 20 Stop, left a voicemail for Officer Carbonel requesting  
01:33:21 21 clarification of the document request. Officer Carbonel  
01:33:24 22 attempted to contact Miyabuchi via telephone that same day at  
01:33:28 23 approximately 8:54 p.m., but was unable to reach him. Officer  
01:33:32 24 Carbonel left a voicemail attempting to clarify the request,  
01:33:35 25 explaining that the documents were being request -- what

01:33:37 1 documents were being requested and stating that he was unable  
01:33:40 2 to provide more details due to the investigation being active  
01:33:43 3 at that time. Officer Carbonel also noted his standard work  
01:33:48 4 hours of 8:15 p.m. to 5:00 a.m.

01:33:52 5 On June 26, 2019, at approximately 10:56 a.m.  
01:33:57 6 Miyabuchi left a -- a voicemail for Officer Carbonel stating  
01:34:01 7 that he was in an all-day meeting and would attempt to contact  
01:34:03 8 him the next day. Based upon this representation, Officer  
01:34:07 9 Carbonel did not attempt to contact Miyabuchi again.

01:34:09 10 On July 1st, 2019, at approximately 9:50 in the  
01:34:14 11 morning, Miyabuchi left another voicemail for Officer  
01:34:18 12 Carbonel. In the voicemail, Miyabuchi expressed concerns that  
01:34:22 13 Officer Carbonel was requesting evidence without a subpoena.  
01:34:24 14 At 9:00 p.m. that night, Officer Carbonel attempted to contact  
01:34:29 15 Miyabuchi via telephone, but was unsuccessful. Officer  
01:34:33 16 Carbonel left a voicemail for Miyabuchi, informing him of the  
01:34:37 17 rule -- of the Rules of the Liquor Commission, Rule 8-101-60,  
01:34:42 18 subsection (b)(4) and that failure to turn over the documents  
01:34:47 19 would result in a violation. Officer Carbonel also informed  
01:34:50 20 Miyabuchi that if they were going to turn over the requested  
01:34:54 21 documents, they should be ready by -- for pick up by July 6,  
01:34:57 22 2019. Finally, Officer Carbonel informed Miyabuchi that any  
01:35:01 23 further questions or concerns should be brought up via email  
01:35:04 24 due to the apparent scheduling conflict between the two of  
01:35:08 25 them. Miyabuchi did not attempt to contact Officer Carbonel

01:35:12 1 again.

01:35:12 2 On July 6, 2019, at approximately 10:03 p.m.,  
01:35:17 3 Officer Carbonel arrived at Minit Stop and spoke with Laanui  
01:35:20 4 regarding the documents. Laanui informed him that nothing had  
01:35:22 5 been set aside for pick up and further stated that she had  
01:35:26 6 passed the request to Miyabuchi and that he would have dwelt  
01:35:28 7 with it.

01:35:31 8 CHAIR U'U: Thank you.

01:35:33 9 Any questions by the board?

01:35:33 10 (No response.)

01:35:36 11 CHAIR U'U: Seeing none, Ms. Tsukiyama, you now have  
01:35:42 12 the opportunity to make a statement regarding this case. You  
01:35:45 13 may also inform the board of any mitigating circumstances  
01:35:49 14 which may or may not applied to sentencing.

01:35:52 15 MS. TSUKIYAMA: Yeah, thank you. I'm sorry for my  
01:35:55 16 voice, I'm getting over something. So if you can't hear me, I  
01:35:59 17 understand, please stop me.

01:36:00 18 We wanted to thank you for this opportunity to  
01:36:02 19 provide some context to the violation. Minit Stop does take  
01:36:05 20 its responsibility to follow all liquor commission rules very,  
01:36:09 21 very seriously. In this case, it was a first time that I'm  
01:36:13 22 aware of in the ten years that I've been working with Minit  
01:36:17 23 Stop and the first time that John is aware of where they got  
01:36:20 24 this blanket request for video, cash receipts and credit  
01:36:24 25 cards.

01:36:25 1           And so, as Mr. Enriquez mentioned, Officer Carbonel  
01:36:33 2           came to the Minit Stop in Makawao, he provided the request, a  
01:36:35 3           written request on the back of a business card, and so the  
01:36:38 4           employee said she'd have to check with her boss. So she did  
01:36:41 5           pass the request on to Mr. Miyabuchi and then he contacted our  
01:36:45 6           office to kind of see how he should respond, because this was  
01:36:48 7           the first time ever that we got this request.

01:36:51 8           And, you know, when we first talked, it was -- we  
01:36:55 9           were both a little concerned because it wasn't asking for  
01:36:58 10          documents that were Minit Stop documents, like Minit Stop  
01:37:01 11          employee records or Minit Stop time cards, it was a blanket  
01:37:05 12          request that included third-party customer information. So  
01:37:10 13          from our end, we wanted to make sure that we would also be  
01:37:15 14          protecting and doing our duty to maintain any kind of privacy  
01:37:18 15          of third-party private identifying information, 'cause you had  
01:37:24 16          customer credit card information and things like that.

01:37:26 17          So because of that, you know, I told John, Let's try  
01:37:29 18          and contact Officer Carbonel and see what is this about,  
01:37:34 19          because we've never gotten a request like this. So as you got  
01:37:38 20          from Officer Carbonel's report, they tried to contact each  
01:37:42 21          other a number of times, but Officer Carbonel works 8:15 p.m.  
01:37:47 22          to 5:00 a.m. and John works normal office hours, so they never  
01:37:51 23          really connected.

01:37:53 24          And although it does say that Officer Carbonel left  
01:37:55 25          some messages, I don't believe John ever got those, so we --

01:38:00 1 he didn't -- we didn't get the message that it was about an  
01:38:03 2 ongoing investigation or that it was -- we were going to get a  
01:38:08 3 violation if we didn't turn it over. Had we gotten those  
01:38:11 4 messages, believe me, we would've turned it over. So they  
01:38:15 5 missed each other and then we got the violation.

01:38:17 6 As soon as we got the violation, we turned over the  
01:38:20 7 documents, the requested cash and credit card receipts, turned  
01:38:25 8 it over to the liquor department. The video footage, though,  
01:38:29 9 the hard drive for that DVR system at the Makawao store had a  
01:38:34 10 problem with it, so they were unable to download any footage.  
01:38:38 11 That hard drive has been since replaced.

01:38:42 12 And to kind of show that we really take it  
01:38:43 13 seriously, after this Makawao incident, the Wakea store got a  
01:38:50 14 similar blanket request on the back of a card from a different  
01:38:55 15 officer. As soon as we got that, we collected everything,  
01:38:58 16 turned it over, said, Here you go, no questions asked. We  
01:39:01 17 learned our lesson, you know, we don't ask the questions, we  
01:39:05 18 just do it. We didn't want to get another violation and we  
01:39:09 19 take it seriously that that's what the department wants,  
01:39:12 20 that's how we should handle it.

01:39:14 21 So we would, you know, just ask for your  
01:39:19 22 consideration. It was probably a little bit just kind of a  
01:39:22 23 first-time thing for us, so we weren't sure, we just thought  
01:39:26 24 it would be good to get a little more information and it just  
01:39:29 25 didn't work out for John and Officer Carbonel to touch bases.

01:39:32 1 So that's kind of the situation and how it occurred.

01:39:38 2 CHAIR U'U: Thank you. Anything else.

01:39:39 3 MS. TSUKIYAMA: No, that's all.

01:39:40 4 CHAIR U'U: Any questions by the commissioners?

01:39:43 5 So my question is: So when they ask -- requested  
01:39:47 6 for the information, did you know that someone got pulled  
01:39:50 7 over --

01:39:51 8 MS. TSUKIYAMA: No. We were not told any -- all you  
01:39:54 9 get is a card, Officer Carbonel's card, on the back it says,  
01:39:59 10 Turn over all video footage, cash receipts, and credit card  
01:40:03 11 receipts for this date, and that's it. It's not even like a  
01:40:06 12 real, you know, request form or something and we're -- which  
01:40:10 13 is why we called to see, can we -- 'cause we never knew it was  
01:40:13 14 part of an investigation, nothing, until we got the violation,  
01:40:17 15 when, obviously, we just turned it over. This is the first  
01:40:20 16 time when we got this report that we found out it was part of  
01:40:24 17 an active investigation.

01:40:27 18 MR. MIYABUCHI: We have a copy of it in our record.

01:40:30 19 MS. TSUKIYAMA: Yeah, I think it's -- I believe it's  
01:40:32 20 in there too. It's --

01:40:37 21 MR. KUSHI: Any objections?

01:40:38 22 MR. ENRIQUES: No.

01:40:42 23 MS. TSUKIYAMA: It's just a -- he just writes on the  
01:40:44 24 back of his card, Turn over all video, cash, credit card  
01:40:48 25 receipts for June 3rd from 3:00 to 7:00.

01:40:50 1 CHAIR U'U: So you're saying if I walk in there and  
01:40:52 2 write something right now, I should get 'em? I'm just  
01:40:54 3 kidding.

01:40:55 4 (Laughter.)

01:40:56 5 CHAIR U'U: I'm sorry.

01:40:58 6 MEMBER UEOKA: On a business card, yes.

01:40:59 7 CHAIR U'U: Any questions by members of the board?

01:41:01 8 MEMBER ALMEIDA: I have a question.

01:41:01 9 CHAIR U'U: Go ahead.

01:41:02 10 MEMBER ALMEIDA: Mr. Enriquez, is that the policy  
01:41:04 11 with the department of liquor when their officers go out and  
01:41:07 12 they're doing an investigation? Is there official  
01:41:11 13 documentation? 'Cause from my experiences with the law  
01:41:15 14 enforcement and such forth, you have to provide that type of  
01:41:18 15 information when you're gonna talk to someone where you can  
01:41:21 16 document it like, you know, I did the follow-up.

01:41:24 17 And then the supervisor sign off on it to say, Okay,  
01:41:29 18 what did you do?

01:41:29 19 This is what I did. I talked to Minit Stop, I  
01:41:32 20 requested these document, here's my official report.

01:41:34 21 Is there anything with the -- I guess the officers  
01:41:37 22 in their capacity to do such a thing other than with the card?

01:41:41 23 MEMBER UEOKA: It wasn't a liquor officer.

01:41:44 24 MEMBER ALMEIDA: Oh, it was a police officer?

01:41:46 25 MR. ENRIQUES: No. It was an inspector.

01:41:51 1 (Multiple speakers.)

01:41:51 2 CHAIR U'U: Sorry. Hang on.

01:41:52 3 Mr. Enriques, go ahead.

01:41:54 4 MR. ENRIQUES: It was the liquor inspector --

01:41:54 5 MEMBER ALMEIDA: Okay.

01:41:57 6 MR. ENRIQUES: -- Carbonel, gave the business card

01:41:58 7 with the information on the back.

01:42:00 8 MEMBER UEOKA: Okay.

01:42:01 9 MR. ENRIQUES: I personally am not sure exactly what

01:42:05 10 the department's policy is on this, I would defer to the

01:42:08 11 department as far as what that is.

01:42:10 12 CHAIR U'U: Okay. So my -- go ahead. Sorry.

01:42:15 13 DIRECTOR MUKAI: Probably what happened is when an

01:42:17 14 investigator is actively investigating a case, they contact

01:42:20 15 the licensee, tell them that it's an active investigation, and

01:42:25 16 this is a request for this type of records. Like Mr. Carbonel

01:42:31 17 asked for the video and cash receipt to verify what the person

01:42:39 18 who was arrested --

01:42:41 19 CHAIR U'U: Okay.

01:42:43 20 DIRECTOR MUKAI: -- stated. And also on the video,

01:42:46 21 it'd probably show the condition of the person when they

01:42:48 22 purchased the liquor at the store, verifying his condition.

01:42:53 23 MEMBER ALMEIDA: Thank you.

01:42:56 24 VICE CHAIR HELM: Yeah. What Allan, I think, is

01:42:58 25 asking is if there's any documentation rather than a card when



01:43:03 1 they do requests for those information?

01:43:08 2 MEMBER UEOKA: Like a letter.

01:43:08 3 MEMBER ALMEIDA: Like a form.

01:43:08 4 MEMBER UEOKA: A professional form.

01:43:09 5 MEMBER ALMEIDA: Form 101.

01:43:11 6 VICE CHAIR HELM: That's, I think, what Allan is

01:43:12 7 asking.

01:43:13 8 MEMBER ALMEIDA: Right.

01:43:15 9 VICE CHAIR HELM: So do you folks, the liquor

01:43:19 10 inspectors have --

01:43:19 11 MEMBER ALMEIDA: Even with like a report number

01:43:19 12 attached to it as well.

01:43:19 13 MEMBER UEOKA: Right, right.

01:43:21 14 MEMBER ALMEIDA: For -- to protect the -- I mean,

01:43:22 15 the licensee as well where they're going on a witch hunt, if

01:43:27 16 you will, a fishing expedition, so --

01:43:29 17 MEMBER AIWOHI: Right. So they understand.

01:43:30 18 MEMBER ALMEIDA: Right. And then like Mr. Miyabuchi

01:43:31 19 said, a subpoena, like, Oh, okay, we found it.

01:43:34 20 MS. TSUKIYAMA: We would love a subpoena.

01:43:34 21 MEMBER ALMEIDA: Correct. So I'm not sure if --

01:43:36 22 MS. TSUKIYAMA: Then we'd know for sure.

01:43:37 23 MEMBER ALMEIDA: -- the department can issue a

01:43:39 24 subpoena.

01:43:40 25 CHAIR U'U: So go ahead, Mr. Enriquez.

01:43:43 1 MR. ENRIQUES: I would say as a result of this case  
01:43:45 2 there is some discussion going on as far as, you know, what  
01:43:49 3 the form of a request would take. Again, I'm not sure exactly  
01:43:54 4 what the policy is on that. I --

01:43:56 5 CHAIR U'U: Okay. I've got a question. No. I'm  
01:43:59 6 sorry. Go ahead. I'm sorry. Why don't you finish?

01:44:00 7 MR. ENRIQUES: Oh, no. That's okay.

01:44:01 8 CHAIR U'U: So my question is: So what is the  
01:44:03 9 length of time? Is there a deadline to submit paper? So,  
01:44:10 10 obviously, you received it at some point except for the hard  
01:44:15 11 drive and it says that, did not -- failed to provide any  
01:44:18 12 information, documents. By a certain point, you must have  
01:44:21 13 received it; correct? Is there a time line to which there's a  
01:44:24 14 deadline for you to receive the information? 'Cause it says  
01:44:27 15 that you didn't receive the information, but it seems like  
01:44:30 16 they did turn over some of the information.

01:44:33 17 MR. ENRIQUES: This would have been as of the date  
01:44:35 18 of the report, because there are a couple -- to my  
01:44:38 19 recollection, there are a couple of dates given. One was  
01:44:39 20 June 28th and another was July 6th, so they had approximately  
01:44:45 21 two opportunities to provide the information and they didn't  
01:44:47 22 do it, and that was kind of the basis for this particular  
01:44:50 23 violation. I have encountered this in a different  
01:44:55 24 administrative law context before, I think it depended on the  
01:45:02 25 circumstances if that particular department would or would not

01:45:06 1 charge, you know, kind of noncompliance with this sort of  
01:45:08 2 thing.

01:45:10 3 MR. KUSHI: Chair.

01:45:11 4 CHAIR U'U: Go ahead.

01:45:12 5 MR. KUSHI: Mr. Chair, maybe I can -- I can assist  
01:45:16 6 the board in that as I understand, the charge is a violation  
01:45:18 7 of Section 8-101-60(b) -- No. 14, and I'll just read it to  
01:45:24 8 you. It's under Prohibitions. (As read) At no time under any  
01:45:27 9 circumstances shall any licensee or its employees fail to  
01:45:33 10 provide any information, documents, books, or records  
01:45:37 11 requested by the commission, board, or the department.

01:45:39 12 Now, again, there was some discussions about  
01:45:44 13 subpoenas and forms and I must remind the board that all your  
01:45:49 14 proceedings are administrative, they're civil proceedings.  
01:45:53 15 When you talk about subpoenas, due process, etc., you're  
01:45:59 16 talking about criminal violations, criminal proceedings.  
01:46:02 17 Okay? Your process -- your procedures are civil in nature and  
01:46:07 18 you cannot send anybody to jail. Okay? You can only fine  
01:46:11 19 them money and the money you fine is against the licensee, not  
01:46:15 20 the drunkard or not the person who -- you know, who bought  
01:46:21 21 the -- the liquor or whatever.

01:46:22 22 So that being the background, I think any  
01:46:26 23 allegations of a subpoena or due cause for records, books,  
01:46:31 24 etc., against the licensee is off base.

01:46:35 25 CHAIR U'U: Okay.

01:46:38 1 MR. KUSHI: Now, again, the rule states what it is.  
01:46:40 2 For example, you've had cases where the inspector goes in and  
01:46:46 3 then they see an overservice situation and -- and they'll ask  
01:46:52 4 the licensee at that point in time, I wanna see who your  
01:46:56 5 employees -- they have to have a list of employees by English  
01:47:00 6 names, that's part of the rules. Right? You mean to say you  
01:47:04 7 need a subpoena to get that? It's a business operation.

01:47:08 8 Now, I grant in this case, if Minit Stop was under  
01:47:14 9 suspicion of being investigated, maybe the inspector could  
01:47:19 10 say, Hey, look, we're looking at possibly you overserving this  
01:47:23 11 guy, okay, and we want your records. Then at least they'd be  
01:47:29 12 on notice, you know. And if they don't have records, then the  
01:47:32 13 proper question is: Why don't you have records? Didn't you  
01:47:35 14 have records the day before, etc. But, again, I give you the  
01:47:40 15 background between your proceedings versus a criminal  
01:47:43 16 proceeding.

01:47:44 17 CHAIR U'U: Okay. Thank you for the clarification.  
01:47:47 18 Again, any more questions by members of the board?  
01:47:47 19 (No response.)

01:47:53 20 CHAIR U'U: Seeing none, the director's argument as  
01:47:56 21 to a penalty. We got it prior, but is there any changes?

01:48:00 22 MR. ENRIQUES: No. Just per the plea agreement,  
01:48:03 23 \$500 fine, \$250 suspended for one year.

01:48:06 24 CHAIR U'U: Okay. I'll make a motion -- this board  
01:48:09 25 will make a -- take this matter into consideration. I'll

01:48:12 1 entertain a motion to go into deliberation.

01:48:14 2 MEMBER UEOKA: So moved.

01:48:16 3 VICE CHAIR HELM: Second.

01:48:16 4 CHAIR U'U: Second. All those in favor, say "aye."  
01:48:16 5 (Response.)

01:48:19 6 CHAIR U'U: (Gavel.)  
01:48:19 7 (Pause in Proceedings: 9:58 a.m.-10:09 a.m.)

01:59:08 8 CHAIR U'U: (Gavel.) The board is now back in  
01:59:11 9 session. After careful deliberation, we came out to for  
01:59:22 10 Count 1, a \$500 fine with \$500 of that fine being suspended  
01:59:27 11 for a period of one year. And we'll -- also was mentioned  
01:59:31 12 that if we could have some clarity by the department as they,  
01:59:35 13 I guess, ask for proper information, kind of -- if you could  
01:59:40 14 not put it on the back of a card. I think we need clarity for  
01:59:44 15 us and seem more professional being. And during the  
01:59:47 16 deliberation, it got brought up with all the scams going on  
01:59:51 17 nowadays and we kinda took that into consideration, yeah.

01:59:54 18 Thank you for your time and have a good day.

01:59:56 19 MS. TSUKIYAMA: Thank you very, very much.

01:59:56 20 MR. MARRERO: Thank you very much.

01:59:59 21 MS. TSUKIYAMA: We really appreciate it.

02:00:02 22 CHAIR U'U: Next, but not least. We'll now hear  
02:00:11 23 Complaint and Accusation No. 2019-05, Village Tavern doing  
02:00:17 24 business as Taverna.

02:00:19 25 Thank you for stepping forward. Would the

02:00:23 1 respondent or its representative please step forward, state  
02:00:27 2 your name -- could you please state your name and in what  
02:00:29 3 capacity you represent the respondent.

02:00:29 4 MR. KAIWI: Chris Kaiwi, I'm one of the partners at  
02:00:35 5 Village Tavern, LLC.

02:00:38 6 CHAIR U'U: Thank you, Mr. Kaiwi. At this time you  
02:00:42 7 have the option of having the charges publicly read or you can  
02:00:43 8 waive the reading. What is your preference?

02:00:44 9 MR. KAIWI: I'll waive the reading, please.

02:00:46 10 CHAIR U'U: Thank you. Mr. Kaiwi, for the record,  
02:00:48 11 do you represent the respondent involved?

02:00:50 12 MR. KAIWI: Yes.

02:00:51 13 CHAIR U'U: Do you have legal counsel?

02:00:53 14 MR. KAIWI: No.

02:00:54 15 CHAIR U'U: Do you understand that you have the  
02:00:55 16 right to have your legal counsel present?

02:00:58 17 MR. KAIWI: Yes, sir.

02:00:59 18 CHAIR U'U: Do you understand the charges against  
02:01:01 19 you?

02:01:01 20 MR. KAIWI: Yes.

02:01:03 21 CHAIR U'U: What is your plea to each count?

02:01:06 22 MR. KAIWI: I'm going to plead no contest with  
02:01:13 23 explanation.

02:01:13 24 CHAIR U'U: Okay. Do you understand the violations  
02:01:17 25 the department of liquor control alleges against you?

02:01:20 1 MR. KAIWI: Yes, sir.

02:01:21 2 CHAIR U'U: Do you understand that you have the  
02:01:22 3 right to plead not guilty?

02:01:24 4 MR. KAIWI: Yes, sir.

02:01:25 5 CHAIR U'U: Do you understand that by -- that by  
02:01:27 6 pleading no contest, you waive the right to a hearing in which  
02:01:30 7 you could present evidence and question witnesses on your  
02:01:33 8 behalf?

02:01:33 9 MR. KAIWI: Yes, sir.

02:01:35 10 CHAIR U'U: Is your plea of no contest voluntary and  
02:01:38 11 not the result of force, threats, or of promises apart from  
02:01:43 12 any plea agreement?

02:01:44 13 MR. KAIWI: Yes.

02:01:45 14 CHAIR U'U: Do you understand that on each count if  
02:01:46 15 the board accepts your plea of no contest, you'll be found  
02:01:51 16 guilty and that the board may issue a reprimand or assess and  
02:01:55 17 collect a penalty of up to \$2,000 or revoke any license at any  
02:01:59 18 time or suspend the right of the licensee to use the  
02:02:02 19 licensee's license?

02:02:03 20 MR. KAIWI: Yes.

02:02:04 21 CHAIR U'U: Do you still wish to plead no contest?

02:02:07 22 MR. KAIWI: Yes.

02:02:08 23 CHAIR U'U: The board hereby finds that the licensee  
02:02:11 24 has entered a knowing and voluntary plea of no contest. The  
02:02:16 25 board accepts your plea and finds you guilty of Counts 1, 2,

02:02:21 1 3, and 4 reflected in Complaint and Accusation No. 2019-05.

02:02:29 2 Will the department present a summary of the case.

02:02:32 3 MR. ENRIQUES: Thank you.

02:02:33 4 On January 23rd, 2019, at approximately 12:31 p.m.

02:02:39 5 Liquor Control Officers Marc Velasquez and Cullen Kawano

02:02:44 6 conducted a routine inspection of the licensed premises of

02:02:47 7 Village Tavern, LLC dba Taverna located at 2000 Village Road

02:02:52 8 in Kapalua. After they arrived, Officer Velasquez observed an

02:02:56 9 employee, who was later identified as Amy Carpenter, remove a

02:03:00 10 glass filled with -- filled with what was later identified as

02:03:03 11 wine from a patron's table. Carpenter carried the glass back

02:03:08 12 to the bar, taking a sip from the glass while doing so.

02:03:11 13 Officer Velasquez approached Carpenter and asked her

02:03:15 14 if the glass contained wine. She confirmed that it did.

02:03:17 15 Officer Velasquez then asked her if she was working right now.

02:03:20 16 Carpenter confirmed that she was. Officer Velasquez

02:03:24 17 identified himself as a liquor control officer, at which point

02:03:28 18 Carpenter said, "Oh, No" and immediately thereafter said, "I

02:03:31 19 was tasting the wine to make sure the bottle was good."

02:03:34 20 Carpenter later claimed that a customer had asked her to taste

02:03:38 21 the wine because it was really good, and that she never drinks

02:03:40 22 while on duty.

02:03:41 23 As part of the investigation, Officer Velasquez then

02:03:45 24 spoke with Chris Kaiwi, who identified himself as an owner/

02:03:49 25 manager of Taverna. When asked if he had an Employee Approved



02:03:53 1 By the Director card, Kaiwi admitted that he did not. Kaiwi  
02:03:58 2 also admitted that he managed other employees and that as a  
02:04:00 3 salary -- salaried employee, he did not clock in or out.  
02:04:05 4 Subsequent investigation confirmed Kaiwi's claims and also  
02:04:08 5 revealed that he had not been issued a card as of August 22nd,  
02:04:13 6 2019.

02:04:14 7 As part of the investigation, Officer Velasquez also  
02:04:17 8 spoke with bartender Leslee Schmidt. Schmidt claimed that she  
02:04:21 9 had an Employee Approved By the Director card, but was unable  
02:04:24 10 to produce it when asked to do so. Subsequent investigation  
02:04:27 11 confirmed that she had, in fact, previously been issued a  
02:04:30 12 card.

02:04:35 13 CHAIR U'U: Any questions by members of the board?  
02:04:35 14 (No response.)

02:04:41 15 CHAIR U'U: Seeing none, Mr. Kaiwi, you now have the  
02:04:44 16 opportunity to make a statement regarding this case. You may  
02:04:48 17 also inform the board of any mitigating circumstances which  
02:04:51 18 may or may not apply to sentencing.

02:04:53 19 MR. KAIWI: I want to address the Leslee Schmidt not  
02:05:00 20 having her card. It is my policy that every bartender does  
02:05:05 21 have a card and they do. They are the MOD on every shift  
02:05:11 22 because for me, I'm in and out of the restaurant from time to  
02:05:17 23 time and I need to know that there is a licensed card on the  
02:05:21 24 premises, which is the bartender. Leslee's explanation and  
02:05:27 25 it's -- we understand -- I understand that she didn't have it,

02:05:31 1 but she said that, I'm very sorry, I changed purses, I went to  
02:05:38 2 an event last night, I didn't bring the purse. You know,  
02:05:43 3 again, no excuse other than that's the explanation that her  
02:05:47 4 card was in her other purse. She is licensed, I think that  
02:05:52 5 the liquor board verified that; regardless, she did not have  
02:06:02 6 her card that -- in that case.

02:06:04 7 In the case with Amy Carpenter, she was terminated  
02:06:08 8 immediately. We understand that -- I understand that that is  
02:06:12 9 a violation. I'm very disappointed. We went through it in  
02:06:16 10 handbooks. It is in our handbooks that tasting and consuming  
02:06:21 11 alcohol is against house policy. We did -- she did get -- I  
02:06:31 12 don't want to say get caught, but she was in violation, she  
02:06:34 13 was terminated.

02:06:35 14 The -- I guess the issue that I have is that when  
02:06:40 15 she was terminated, she filed for unemployment. I then  
02:06:44 16 submitted a letter stating why and with the violation from the  
02:06:51 17 book of the liquor commission, and going back and forth, they  
02:06:56 18 approved her unemployment. I continue to contest it and the  
02:07:05 19 unemployment agency -- understanding this is totally separate  
02:07:08 20 and I understand and I respect and I will understand there's  
02:07:14 21 probably a fine that's going to be coming our way, but I was  
02:07:18 22 confused at why the unemployment would agree to her -- yeah.  
02:07:27 23 And they said that because it was --

02:07:32 24 It was Wine Wednesday, which we had every week, and  
02:07:36 25 it's a situation where it's a -- it's a promotion and people

02:07:43 1 have a option to -- it's kind of like a happy hour all day  
02:07:48 2 where it is a -- where people can purchase wine at a  
02:07:51 3 discounted price. She took a sip, which is -- I understand is  
02:07:57 4 an infraction. She was asked -- they thought that this one  
02:08:02 5 was not what they expected, so would you take a sip, would you  
02:08:09 6 see if this is what I ordered. Regardless, I understand that  
02:08:13 7 that's an infraction. But my concern or my frustration is  
02:08:21 8 with dealing with the unemployment agency for them to approve  
02:08:25 9 it after two or three back and forths. So I'm going to accept  
02:08:31 10 the fact that I did -- my establishment did have an infraction  
02:08:37 11 in regards to Amy.

02:08:38 12 In regards to Leslee Schmidt, as a woman, I  
02:08:45 13 understand that. My wife, who changes purses five or six  
02:08:51 14 times, didn't bring her proper ID into the -- into the purse  
02:08:56 15 that she brought to work, which is where her card is. And it  
02:09:02 16 is of my operational expectations that the MOD, the manager on  
02:09:11 17 duty, is always the bartender, because of my possibility of  
02:09:15 18 leaving to do other things as a sole operator. Going to the  
02:09:19 19 drug store to get light bulbs. I mean, the hardware store to  
02:09:24 20 get light bulbs or whatever it is. So to ensure that  
02:09:28 21 somebody's there, the manager -- the bartender is always the  
02:09:32 22 MOD.

02:09:33 23 I've been on Maui for over 30 years running a lot of  
02:09:37 24 restaurants and I've never -- I have not taken the liquor  
02:09:42 25 license to have a manager's card. I have applied and sat in

02:09:47 1 front of the adjudication board to be approved of license for  
02:09:53 2 two other restaurants, Village Tavern and then Pineapple  
02:09:59 3 Grill. I always had the bartender be the MOD. So it was a  
02:10:05 4 little -- not frustrating, but it was -- I was caught off  
02:10:12 5 guard by saying that I had to have one. We did provide the  
02:10:17 6 time sheets, I am not on there because I am a salaried  
02:10:21 7 employee.

02:10:23 8 So, again, I sit here amongst you and I understand  
02:10:28 9 the charges. I accept the one with Amy, I do -- I would -- I  
02:10:36 10 guess I'm asking for leniency, understanding that I will  
02:10:39 11 accept the infraction. But with Leslee, that's the  
02:10:43 12 explanation for Leslee not having her card and, I mean, I'm  
02:10:48 13 not going to -- guys, I'm not going to ask you if you're gonna  
02:10:52 14 agree to that, but I think women will understand the situation  
02:10:57 15 with different purses. Irregardless, she didn't have her  
02:11:00 16 card.

02:11:00 17 So I sit here in front of you just understanding  
02:11:05 18 what I'm facing, but I'm asking for -- I don't want to I'm  
02:11:09 19 asking for leniency, but I am. I do -- I've been on -- part  
02:11:13 20 of Maui for over 30 years in the F & B and understand the  
02:11:18 21 rules and regulations of the liquor commission and abide by  
02:11:22 22 them on a daily basis. And this is what I do, I do this, the  
02:11:28 23 F & B, and I do it on Maui and I think I do a pretty good job.  
02:11:32 24 I don't have a -- I don't think personally against any of my  
02:11:36 25 establishments, I don't have a record that would be checkered

02:11:38 1 in the past. So I sit here understanding what I'm faced  
02:11:46 2 against.

02:11:46 3 CHAIR U'U: Thank you. Thank you, Mr. Kaiwi.

02:11:49 4 Any questions by members of the board?

02:11:51 5 VICE CHAIR HELM: Yeah, Chair.

02:11:52 6 CHAIR U'U: Mr. Helm.

02:11:54 7 VICE CHAIR HELM: Glenn, regarding the license part,  
02:11:57 8 it is the department's requirement that they carry that card  
02:12:01 9 at all times while they're at work? And even if there's a  
02:12:05 10 record that shows that she has a card, like she -- like he  
02:12:09 11 said. So is that a penalty, actually, for -- for something  
02:12:14 12 like that?

02:12:15 13 DIRECTOR MUKAI: Our rule states that while she's on  
02:12:18 14 duty, she has to have it on person or within the premises, so  
02:12:22 15 it might be in her purse or -- some premises allow their  
02:12:30 16 employees with cards to leave it in the cash register or  
02:12:34 17 someplace else so the card is always on the premises.

02:12:37 18 VICE CHAIR HELM: Thank you.

02:12:38 19 CHAIR U'U: Any other questions by the board?

02:12:38 20 (No response.)

02:12:42 21 CHAIR U'U: Seeing none, director's argument as to a  
02:12:45 22 penalty.

02:12:46 23 MR. ENRIQUES: The original license was issued back  
02:12:49 24 in March 2016. They have one prior violation for service to a  
02:12:55 25 minor that was adjudicated on June 1st, 2017, but they have no

02:13:00 1 prior history of violations like the -- like the ones here.  
02:13:04 2 Based on that, we're requesting the following:  
02:13:08 3 For Count 1, a \$100 fine.  
02:13:12 4 Count 2, a \$100 fine.  
02:13:15 5 Count 3, a \$100 fine.  
02:13:19 6 And Count 4, a \$500 fine, \$250 suspended for one  
02:13:28 7 year on the condition that another violation of the same or  
02:13:32 8 similar nature does not occur within that year.  
02:13:35 9 CHAIR U'U: Questions by the commission?  
02:13:35 10 (No response.)  
02:13:37 11 CHAIR U'U: Seeing none, this board will take this  
02:13:39 12 matter into consideration. I'll entertain a motion to go into  
02:13:43 13 deliberation. Motion to --  
02:13:44 14 VICE CHAIR HELM: So moved.  
02:13:46 15 CHAIR U'U: Second.  
02:13:47 16 MEMBER AIWOHI: Second.  
02:13:48 17 CHAIR U'U: All those in favor, say "aye."  
02:13:48 18 (Response.)  
02:21:37 19 CHAIR U'U: (Gavel.)  
02:21:37 20 (Pause in Proceedings: 10:24 a.m.-10:32 a.m.)  
02:21:42 21 CHAIR U'U: Just a couple more questions, Mr. Kaiwi.  
02:21:46 22 What is -- so your name of employees, your name is not on that  
02:21:49 23 list?  
02:21:50 24 MR. KAIWI: My name is not on the list, no.  
02:21:53 25 CHAIR U'U: Okay.

02:21:54 1 MR. KAIWI: I do not punch in because, like I said,  
02:21:57 2 I, from time to time, have to leave and --

02:22:00 3 CHAIR U'U: You're the owner? Are you the owner?

02:22:02 4 MR. KAIWI: Yes.

02:22:03 5 CHAIR U'U: Okay. And the second question: Do you  
02:22:06 6 have -- so you do have the card now?

02:22:08 7 MR. KAIWI: My card?

02:22:08 8 CHAIR U'U: Yes.

02:22:10 9 MR. KAIWI: No, I don't.

02:22:11 10 CHAIR U'U: Oh, you don't. Okay. Okay. Have you  
02:22:12 11 any -- taken any corrective actions so this doesn't happen  
02:22:16 12 again with the employees of not having their card on the  
02:22:18 13 premises?

02:22:18 14 MR. KAIWI: Yes, sir. We have -- I've had bar  
02:22:22 15 meetings every month. We've actually had -- hired an outside  
02:22:27 16 HR service that did a mandatory HR overall view of what is  
02:22:35 17 expected of a server from our dishwashers to our lead  
02:22:40 18 supervisors to my lead management team.

02:22:44 19 CHAIR U'U: Okay.

02:22:45 20 MR. KAIWI: We have a bar manager and her first  
02:22:48 21 question when interviewing a bartender, potential bartender  
02:22:53 22 is, Do you have an active and -- not legal, but active Maui  
02:23:00 23 liquor card, as far as that goes, because then we explain it's  
02:23:05 24 expected that you have it on you every day that you're working  
02:23:08 25 here. The situation with Leslee, she is -- yeah, she just

02:23:18 1 knew she had to have it on her, she's been a manager at a  
02:23:22 2 restaurant formerly and realized that she screwed up.

02:23:28 3 CHAIR U'U: Okay. Thank you.

02:23:30 4 MEMBER UEOKA: Is she still employed?

02:23:33 5 MR. KAIWI: She actually moved to the other side and  
02:23:36 6 she is -- excuse me. She was in Napili, she moved to  
02:23:40 7 Launiupoko, so now she, I believe, is working somewhere in  
02:23:43 8 Lahaina and I don't know if she's in management or bartending.

02:23:46 9 MEMBER UEOKA: But she's not in your employ?

02:23:48 10 MR. KAIWI: She's not in my employ any more.

02:23:51 11 MEMBER UEOKA: Okay.

02:23:51 12 CHAIR U'U: Thank you.

02:23:51 13 Mr. Kushi.

02:23:53 14 MR. KUSHI: Yeah, Mr. Chair, you know, based on what  
02:23:55 15 your Mr. Kaiwi's response to your questions, could the  
02:23:59 16 department and the prosecutor on Count 2 and 3 -- Count 2 is  
02:24:04 17 that, you know, whenever you -- the inspector goes into an  
02:24:07 18 establishment, they want to see the list of employees. So he  
02:24:10 19 said his name is not on the list, so is the department's  
02:24:15 20 position that as the -- as the owner or principal, he doesn't  
02:24:19 21 need to be on the list?

02:24:21 22 MR. ENRIQUES: No. Our -- oh, sorry.

02:24:25 23 DIRECTOR MUKAI: Yeah, he would have to be on the  
02:24:26 24 list.

02:24:29 25 MR. KUSHI: But, you know, but he doesn't -- he's



02:24:29 1 not -- he's not there all the time.

02:24:31 2 You float around; right?

02:24:31 3 MR. KAIWI: Yeah.

02:24:33 4 MR. KUSHI: So the times that he is there, his name  
02:24:35 5 has to be on the list?

02:24:37 6 DIRECTOR MUKAI: Yes.

02:24:39 7 MR. KUSHI: He's not -- he's not an employee, he's  
02:24:39 8 not a manager, he's the owner.

02:24:43 9 VICE CHAIR HELM: If he's -- if he's the owner?

02:24:46 10 DIRECTOR MUKAI: I believe how the rule reads --

02:24:49 11 MR. ENRIQUES: Yeah. What it is, is the rule  
02:24:51 12 requires that all managers and a bunch of other people or any  
02:24:54 13 other person who performs any type of managerial or  
02:24:58 14 supervisory functions in conjunction with the operation,  
02:25:02 15 maintenance, supervision, or management of the licensed  
02:25:05 16 premises, directly or indirectly, meet the Employee Approved  
02:25:08 17 By the Director requirements. So if I recall correctly, he  
02:25:13 18 stated that he does manage employees as part of his duties,  
02:25:17 19 you know, as an -- as an owner, so he would qualify under that  
02:25:21 20 statute.

02:25:22 21 MR. KUSHI: Okay. So when he's there just to, you  
02:25:25 22 know, check things out at one of three establishments, if he's  
02:25:29 23 there, he needs to put his name on the list then?

02:25:33 24 MR. ENRIQUES: Well, clock in and out, yes.

02:25:34 25 VICE CHAIR HELM: What statute is that? Do you have

02:25:38 1 the number for that?

02:25:39 2 MR. KUSHI: No. It's a rule.

02:25:39 3 VICE CHAIR HELM: Oh, it's a rule. Okay.

02:25:40 4 MR. KUSHI: So, likewise, No. 3, Count 3, he says he  
02:25:41 5 has -- he does not have a liquor card and, apparently, he does  
02:25:47 6 not intend to get a liquor card. Does he need to get a liquor  
02:25:52 7 card?

02:25:53 8 DIRECTOR MUKAI: As -- as a --

02:25:55 9 MR. ENRIQUES: I would think that he would, at least  
02:25:58 10 under the statute in question, just because it says that he  
02:26:03 11 needs to meet -- if he's going to be doing anything that  
02:26:07 12 covers -- that's covered by the statute, he needs to meet the  
02:26:10 13 minimum requirements set by the -- set forth by the  
02:26:13 14 commission.

02:26:14 15 MR. KUSHI: I mean -- Mr. Chair, excuse me, but, I  
02:26:16 16 mean, I'm not sure what kind of ownership structure he has,  
02:26:20 17 but if you're saying that -- for example, the island of Lanai,  
02:26:25 18 Larry Ellison comes down, he wants to visit one of his  
02:26:30 19 restaurants, you mean to say he's got to be listed on the  
02:26:32 20 employee sheet?

02:26:35 21 MEMBER UEOKA: And have a liquor card.

02:26:35 22 MR. KUSHI: And have a liquor card?

02:26:37 23 MR. ENRIQUES: I see what you're saying. I'm just  
02:26:39 24 basing it strictly off the -- I recognize the assertion --

02:26:39 25 MR. KUSHI: Yeah, yeah.

02:26:41 1 MR. ENRIQUES: -- the reality of the situation, but  
02:26:42 2 that's what the statute says.

02:26:44 3 CHAIR U'U: What if you own the building, but not  
02:26:46 4 the restaurant, then what?

02:26:47 5 MR. KUSHI: No, no. That's landlord.

02:26:50 6 CHAIR U'U: The landlord, okay. He's the licensee.  
02:26:51 7 Okay.

02:26:51 8 Okay. Moving on. So I guess the board is now back  
02:26:56 9 in session.

02:26:57 10 MR. KUSHI: Oh, Mr. Chair.

02:26:57 11 CHAIR U'U: Yes.

02:26:58 12 MR. KUSHI: In light of that, Mr. Kaiwi, I would  
02:27:00 13 urge you to put your name on the list whenever you're there  
02:27:03 14 and I would urge you to get a liquor card. And it's up to  
02:27:07 15 you, do what you want.

02:27:10 16 CHAIR U'U: Okay. After careful deliberation, for  
02:27:14 17 Count 1, the board recommends a \$100 fine.

02:27:18 18 For Count 2, also a \$100 fine with \$100 of that  
02:27:23 19 being suspended provided there is no conviction of the same  
02:27:28 20 offense for a period of one year.

02:27:30 21 Count 3, a \$100 fine with \$100 of that being  
02:27:34 22 suspended, again provided there is no conviction of the same  
02:27:37 23 offense for a period of one year.

02:27:39 24 And Count 4, a \$500 fine with \$250 of that being  
02:27:44 25 suspended, again, provided there is no conviction for the same

02:27:47 1 offense for a period of one year.

02:27:49 2 Thank you for your time and the department will  
02:27:52 3 notify when payment is due, Mr. Kaiwi.

02:27:55 4 MR. KAIWI: Can I ask a question? I was sitting in  
02:27:58 5 front of the board and as -- as an owner to apply for a liquor  
02:28:04 6 license for the Village Tavern, LLC and was approved and my  
02:28:09 7 name has been approved -- well, my LLC has been approved. To  
02:28:15 8 Mr. Mukai, is -- that still doesn't justify that I am -- I'm  
02:28:25 9 under -- you know, I'm in the department as an owner of the  
02:28:30 10 restaurant and I still need to go through and get the test as  
02:28:35 11 an owner of the restaurant?

02:28:38 12 DIRECTOR MUKAI: Yes.

02:28:42 13 MR. KAIWI: Okay.

02:28:43 14 CHAIR U'U: Thank you.

02:28:43 15 MR. KAIWI: Thank you.

02:28:44 16 CHAIR U'U: Thank you for your time.

02:28:45 17 MEMBER ALMEIDA: Thank you. Everything all right?

02:28:49 18 MR. KAIWI: Yeah.

02:28:49 19 CHAIR U'U: Thank you.

02:28:50 20 MR. KAIWI: Thank you very much.

02:28:52 21 CHAIR U'U: Anything else, Director?

02:28:53 22 (No response.)

02:28:53 23 CHAIR U'U: Anything else, Mr. Kushi?

02:28:54 24 MR. KUSHI: No.

02:28:54 25 (Multiple speakers.)

02:28:56 1 CHAIR U'U: Motion to adjourn.  
02:28:59 2 VICE CHAIR HELM: So moved.  
02:29:01 3 MEMBER UEOKA: Second.  
02:29:01 4 CHAIR U'U: All those in favor, say "aye."  
02:29:01 5 (Response.)  
02:29:04 6 CHAIR U'U: (Gavel.)  
01:31:14 7 (The proceedings were adjourned at 10:39 a.m.)

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C E R T I F I C A T E

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

I, Sandra J. Gran, Certified Shorthand Reporter for the State of Hawaii, hereby certify that on November 7th, 2019, at 9:05 a.m. the proceedings was taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

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

DATED this 19th day of November, 2019, in Maui, Hawaii.



\_\_\_\_\_  
Sandra J. Gran, RPR  
Hawaii CSR 424