

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 17-CV-23958

BEACH BLITZ CO.,

Miami, Florida

Plaintiff(s),

November 17, 2017

vs.

CITY OF MIAMI BEACH, FLORIDA,

Volume 01

Defendant(s).

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PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION  
BEFORE THE HONORABLE JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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- and -

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EXHIBIT

E

## I N D E X

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MANUEL MARQUEZ

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1 Thereupon,  
2 the following proceedings began at 11:02 a.m.:

3 (In open court)

4 THE COURT: Hearing on preliminary injunction.

5 Appearances for the plaintiff first.

6 MR. HUDSON: Phillip Hudson on behalf of plaintiff  
7 Beach Blitz. I have my paralegal, Jennin Gil, and Mr. Doran  
8 Doar, the principal of Beach Blitz, your Honor.

9 THE COURT: Who is here for the defendants?

10 MR. ARANA: Enrique Arana, Scott Byers, and Gary  
11 Pappas, from Carlton Fields, on behalf of the defendants.

12 THE COURT: Anything we need to discuss before we get  
13 started?

14 MR. HUDSON: Did you want a brief opening?

15 THE COURT: Well, I think we had it yesterday. If you  
16 want to spend five minutes, you are welcome to, but I don't  
17 want to spend too much time.

18 MR. HUDSON: I will invoke the rule.

19 THE COURT: If anybody has a witness other than the  
20 parties, you need to leave. You can't discuss your testimony  
21 with anybody until your testimony is completed.

22 Schedule, we will take a break around 1 for lunch. We  
23 will come back and finish after that.

24 MR. HUDSON: Thank you. I will try to be as brief as  
25 possible given yesterday, your Honor.

1           We are here on a preliminary injunction to get back to  
2 the status quo. Although I indicated yesterday, and I still  
3 believe this is a simple matter, it's a very, very, very  
4 important matter because it involves the destruction of a  
5 business, in our view, in the absolute complete absence of due  
6 process, whether that be procedural or substantive due process.

7           You know the outline of the case so I am not going to  
8 go through what we will put on for evidence today.

9           We believe essentially we need to demonstrate to the  
10 court the four elements necessary for a preliminary injunction  
11 in this case, your Honor. What we are asking the court to do  
12 is to immediately command that the City of Miami Beach issue  
13 whatever license necessary, whether it be on a year-to-year  
14 basis or on a temporary basis pending during this litigation  
15 because there is no status quo, because they put my client out  
16 of business. If he's not restored to that position in the  
17 relatively near future, he will never be to survive. Whether  
18 that's a few weeks or a month at the outside, your Honor, his  
19 business will be destroyed.

20           THE COURT: They say you don't have a protective  
21 property interest.

22           MR. HUDSON: Well, as I indicated to you yesterday,  
23 they are trying to change the narrative. They are trying to  
24 say it's about a business license. It's not, your Honor. It's  
25 about a unique liquor store in a unique area with unique

1     licensing that is now irreplaceable.

2             THE COURT:  It's the license that's the issue.  In  
3     other words, they are not going to stop you if you want to sell  
4     Cheerios from that spot, you can do that.  What you can't sell  
5     is liquor.  For liquor you need a license.  They say there are  
6     a bunch of cases -- I haven't read those cases -- but they say  
7     there is a bunch of cases that you don't have --

8             MR. HUDSON:  First of all, we disagree with those  
9     cases, your Honor, and we are happy to brief that particular  
10    issue again if you want.

11            We don't agree.  There are certain types of licenses  
12    that are protectable interests, number one.

13            THE COURT:  Which ones are those?

14            MR. HUDSON:  Your Honor, those are licenses that are  
15    critical to a business, that in the absence of that you lose  
16    the good will of the business, the customer base of the  
17    business.  Those types of licenses.

18            THE COURT:  A liquor license, for instance.

19            MR. HUDSON:  Exactly.

20            THE COURT:  Liquor is 90 percent of his sales, I am  
21    sure.  Do you have cases that say we treat liquor licenses  
22    different than we treat -- I don't know what kind of licenses  
23    there are.  You are a licensed to be a veterinarian.  If you  
24    lose your license to be a vet, you can keep your store but all  
25    you can sell is dog food.  Are you saying there's any cases

1 that say there are licenses that you have a property interest  
2 in?

3 MR. HUDSON: There are those cases, your Honor. I  
4 don't know as I stand here whether there's a liquor license  
5 case on point. But there's two ways I want to address that  
6 argument with you.

7 First of all, liquor licenses. We are not talking  
8 about a liquor license here. My client has a liquor license  
9 from the State of Florida that's current and valid. The State  
10 of Florida has preempted all other governments in Florida --  
11 municipalities, counties, et cetera -- has specifically  
12 preempted the regulation of liquor but for three things, and  
13 the only one relevant in this case are hours of sales. We are  
14 not here on the hour of sale issue.

15 So what we are alleging they have done is prevented us  
16 from renewing our license, which is a renewal process and would  
17 have been automatically renewed had they not prevented us from  
18 paying it, therefore requiring us to get a new license, at all  
19 times knowing that they would never give us a new license  
20 because of the change of the ordinance.

21 One of the exhibits that I believe you are going to  
22 see today is an internal City of Miami Beach record that says  
23 he may not reapply for a liquor license because of the new  
24 ordinance.

25 THE COURT: The BTR. You are making the statement I

1 made.

2 MR. HUDSON: Correct. I'm sorry, Judge. Thank you  
3 for correcting me.

4 He may not now apply for that BTR because of the  
5 change in the statute. We believe that was intentional. That  
6 is a taking, Judge. Certainly it's a taking of the license.  
7 But it's not the license that's in our view the relevant issue.

8 They targeted these four liquor stores. They  
9 targeted -- malignant tumor, as the Mayor called it. They  
10 targeted the cafes that are serving until 5:00 p.m.

11 We have evidence that we will show, that we don't need  
12 to get into today, of the targeting, your Honor. They  
13 specifically intended to put him out of business by this.

14 THE COURT: I understand your argument of the fact  
15 that what they are saying is that legally you have got no right  
16 to be here, you should be in Miami Beach appealing this to some  
17 special master or administrative law judge. When that gets  
18 denied, you should go on your way to state court.

19 MR. HUDSON: Let's talk about that. There is no  
20 appellate right at this point because their argument is that  
21 the license expired and as a result you can't get it. So their  
22 argument in their very papers says, all right, Mr. Hudson, send  
23 your client down to do an application for a new license. I am  
24 going to show you today that they have already made the  
25 decision they are not going to grant him a new license. That's

1 part of the conspiracy.

2 They tried to get to the end of the year. They got to  
3 the end of the year. They are now saying you have to go apply  
4 for a new license, but you can't get a new license because of  
5 the change in the code. So they won. They got what they  
6 wanted. They put one of the four liquor stores out of  
7 business, your Honor.

8 THE COURT: I don't want to hear too much more. I am  
9 going to be more interested after we get the testimony because  
10 then we could talk about, instead of what you are going to  
11 hear, what I heard. I know the facts. I don't know the way  
12 you guys do it, but I read the papers and I am familiar with  
13 it. I really don't want to hear too much more argument.

14 MR. HUDSON: Understood, your Honor.

15 The due process, that's what you are going to hear  
16 today. You are going to hear from my client two things. One,  
17 irreparable harm. Why this is unique. It is unique by the  
18 very fact that it's irreplaceable. It's made irreplaceable by  
19 their ordinance. So the fact that he was able to stay and  
20 renew his license. They took it away from him without any due  
21 process. There is no remedy. They are trying to get you to  
22 believe there is a remedy. There isn't. It wasn't revoked.  
23 It wasn't suspended. It wasn't denied.

24 They got him to October 1 where he couldn't renew it.  
25 There is no legal way for him to reopen absent the relief from



1 this court, Judge. That's why an injunction is appropriate.

2 So what you are going to hear from him today, your  
3 Honor, is essentially the unique nature of this business, why  
4 it's unique, and, as I said, it is now self-evident that it's  
5 unique because he was grandfathered in and nobody could do it.  
6 Number one.

7 Number two, you are going to hear that he tried and  
8 hired professional after professional and he personally went  
9 down multiple times --

10 THE COURT: I heard all this yesterday. I told you I  
11 don't want to hear this again.

12 Let's go to the defendant. I understand what you  
13 want. I want five minutes or less. Same for you. And don't  
14 tell me what you told me yesterday. If that's what you are  
15 going to tell me, sit down.

16 MR. ARANA: Your Honor, I will take two minutes here  
17 at the outset.

18 A critical fact that they are misconstruing, the BTR  
19 license expired naturally on September 30, 2016. It expired.

20 THE COURT: Because you wouldn't let what he says --  
21 don't say no because you don't know what I am going to say.  
22 Because he said that you refused to take payment for the  
23 license while the violations were unpaid.

24 MR. ARANA: I apologize for interrupting you. The  
25 factual history is as follows. On September 30, 2016, the

1 license expired.

2 THE COURT: We all know that.

3 MR. ARANA: Nine months later they were cited for  
4 operating without a license. That was on June 26, 2017, nine  
5 months later.

6 Since that time they contend they had been trying to  
7 get a new BTR, that they have been trying to renew it or get a  
8 new one, and that the city has deprived them of that  
9 opportunity. We disagree with that. But here is the point,  
10 your Honor. The case law is unequivocally clear that when a  
11 license is expired -- this is not about revoking an existing  
12 license or taking it away from them. They don't have one. It  
13 expired naturally. So there is no --

14 THE COURT: You are saying once September 30, the last  
15 year rolled around, no matter what happened, if the city didn't  
16 want to give them the license again, you didn't need to.

17 MR. ARANA: No, not at all. What I am saying is  
18 there's no property interest at that point. There is no  
19 federally protected property interest in an expired license.  
20 There's no dispute about that. There's a legion of cases to  
21 that effect.

22 They say, well, it was our business. It was our  
23 business activity. That's protected. Well, your Honor, there  
24 are Supreme Court and Eleventh Circuit authorities. College  
25 Savings Bank v. Florida Prepaid PostSecondary Education, 527

1 U.S. 666, that says: While the assets of a business are  
2 property, business in the sense of the activity of doing  
3 business or the activity of making a profit is not property in  
4 the ordinary sense.

5 The Eleventh Circuit says the same thing.

6 In other words, the activity of doing business is also  
7 not a protected property interest. So you don't have it either  
8 way in terms of a property interest you can protect in federal  
9 court.

10 Now, the license expired naturally. The plaintiffs  
11 can apply for a new BTR, and it may well be denied by the city  
12 on the grounds that there is an ordinance in effect that  
13 prohibits package liquor stores in the district. But if that  
14 is what the city decides, the plaintiff can appeal that  
15 decision through the state process.

16 THE COURT: Who do they appeal to?

17 MR. ARANA: They can appeal it through the city's  
18 administrative process to the city manager or his designee, who  
19 will then take evidence, and they can make this argument to the  
20 city manager. They can say, no, we really should be allowed to  
21 get the license because we didn't understand or we were  
22 confused or misled or whatever they want to say.

23 THE COURT: What's their due process to remedy the  
24 wrong they allege that you refused to take their money and  
25 allow them to renew the license within the one-year period?

1           MR. ARANA: If the city did anything wrong by not --  
2 if the city did not take their money, and the evidence will  
3 show that that is not correct.

4           THE COURT: We will see.

5           MR. ARANA: They can make those arguments in state  
6 court, that they are entitled to a license under state law.

7           Their argument to the court is that they are entitled  
8 to a new license under state law. Well, they need to make that  
9 argument in state court. First in the state administrative  
10 procedure and then in the state -- and then if they want in the  
11 state courts.

12          THE COURT: But is there a way for them to get to an  
13 administrative procedure without applying for a new license?  
14 Because they don't want to apply for a new license. What they  
15 want you to do is -- what they wanted you to do is issue them  
16 their BTR before September 30, or to renew the BTR, whatever it  
17 is.

18          MR. ARANA: I don't think there will be any dispute  
19 about this. The license expired on September 30, 2016 because  
20 they did not renew it, and they will not dispute that they made  
21 no effort to renew it before that date or for nine months  
22 thereafter.

23          THE COURT: Well, I think once June rolled around they  
24 started to.

25          MR. ARANA: I am saying -- June is nine months later.

1 They realized that they were operating without a license. So  
2 they have an expired license. So they have no federal property  
3 right.

4 Now if they want a new license --

5 THE COURT: Getting back to the facts, what if they  
6 didn't get a citation, but on June 1st he woke up and said, my  
7 Lord, I forgot to get a new BTR and he went down to City Hall  
8 and gave you guys \$1,000?

9 MR. ARANA: If he had done that, he may have gotten a  
10 license at that time.

11 THE COURT: Is the city obligated to give him a  
12 license at that time?

13 MR. ARANA: I am not sure whether they are obligated  
14 or not, but the city would make a decision and if he didn't  
15 like that decision, he could appeal it.

16 If he had tendered the money and they said you get a  
17 license, they give it to him. If they said no, you are not  
18 entitled to a license, then he could appeal that decision.

19 THE COURT: What can he do now other than apply for a  
20 new license? Assuming he doesn't apply for a new license, does  
21 he have any administrative rights in the city?

22 MR. ARANA: Vis-a-vis the license, no.

23 THE COURT: No. Vis-a-vis -- well, when you say the  
24 license, the BTR.

25 MR. ARANA: Vis-a-vis the BTR.

1           THE COURT: What he says is he has no administrative  
2 process to go to because the BTR was wrongfully withheld from  
3 him.

4           MR. ARANA: If he thinks that was the case, he  
5 could -- yes, if he thinks it's been withheld from him already,  
6 he can appeal that, whatever decision he -- you know, he's got  
7 to identify at a point in time where the city said you can't  
8 have one. But if at any point the city says we will not give  
9 you a BTR, he can appeal that decision.

10          Section 102.372 of the city code says: Any person  
11 whose application for business tax receipt has been denied may  
12 seek a hearing under Sections 102.384 and 102.385.

13          If he in fact tried during the course of the year to  
14 get a BTR license and the city said I am sorry, we are not  
15 going to give it to you, he could appeal that.

16          THE COURT: All right. Very good.

17          Call your first witness, please.

18          MR. HUDSON: Doran Doar.

19          THE COURT: Come on up, Mr. Doar.

20                         DORAN DOAR,  
21 having been first duly sworn on oath, was examined and  
22 testified as follows:

23          THE WITNESS: Doran Doar. Last name D-O-A-R.  
24  
25

## DIRECT EXAMINATION

BY MR. HUDSON:

Q. Good morning.

Are you familiar with an entity by the name of Beach Blitz, which is the plaintiff in this case?

A. Yes.

Q. And what is your involvement with Beach Blitz?

A. I am the owner of the Beach Blitz, Florida corporation.

Q. Are you familiar with an entity or something called Ocean 9 Liquor?

A. Yes. It is the liquor store, the d/b/a Beach Blitz. Beach Blitz d/b/a Ocean 9 Liquor.

Q. So you own Ocean 9 Liquor store through Beach Blitz?

A. Yes.

Q. Please wait for me to finish my question, sir.

A. Yes.

Q. Thank you.

Are you familiar with something called Ocean 11 Liquor or Ocean 11 Market?

A. Yes.

Q. What is Ocean 11 Market?

A. It's a regular convenience store that I own.

Q. You own that as well?

A. Yes.

Q. Now, Ocean 9 Liquors is a full liquor store, correct?

1 A. Yes.

2 Q. Does Ocean 11 Market sell liquor?

3 A. Yes. Beer and wine.

4 Q. Only beer and wine?

5 A. Yes.

6 Q. Does Ocean 9 hold a Florida state license to sell all types  
7 of liquor?

8 A. Yes.

9 Q. How long has Ocean 9 been in business?

10 A. From 2012.

11 Q. Is it a profitable company?

12 A. Very profitable.

13 Q. Briefly tell the court the location of Ocean 9 Liquor and  
14 what type of business it is.

15 A. Ocean 9 Liquor, it's located in a very unique place in the  
16 center of South Beach, half a block from Ocean Drive, next door  
17 to Mangos Tropical Bar, and many turn to the beach. It's a  
18 very unique, special location.

19 Q. Do you know what the MXE district is?

20 A. Yes.

21 Q. Tell the court what you understand the MXE district to be.

22 A. What I understand from right now that MXE, it's from Fifth  
23 Street to 15th or 16th Street southwest and from Collins Avenue  
24 to Ocean Drive east and west.

25 Q. And the City of Miami Beach recognizes the MXE district as



1 a separate zoning district; is that correct?

2 A. Yes.

3 Q. How many liquor stores that sell full liquor are presently  
4 in the MXE district?

5 A. Three or four. Four liquor store.

6 Q. And does that include Ocean 9, which is closed?

7 A. Yes.

8 Q. So there are presently three liquor stores that are  
9 operating?

10 A. Yes.

11 Q. Are you generally familiar with a series of ordinances over  
12 the past 12 months or so where the City of Miami Beach has  
13 substantially reduced the hours of operation of the liquor  
14 stores in the MXE district?

15 A. Yes, I am familiar.

16 Q. Have you objected to those ordinances?

17 A. Yes.

18 Q. Have you hired professionals to help you deal with the City  
19 of Miami Beach to try to change those ordinances?

20 A. Yes.

21 Q. What are the current hours of sale in the MXE district, do  
22 you know?

23 A. Yes.

24 Q. What are they?

25 A. Until a few changes, but I think right now the hours is

1 between 10:00 a.m. to 8:00 p.m. in the evening. It used to be  
2 8:00 a.m. in the morning to 12:00 a.m. in the night.

3 Q. So in the last 12 months there had been a series of  
4 ordinances that have reduced the number of hours by six hours;  
5 is that fair?

6 A. Yes. From 6 to 10.

7 Q. Do you believe Ocean 9 Liquors would be able to survive  
8 with the substantially reduced hours? It's possible, but do  
9 you believe --

10 A. Hard to believe, but it's possible.

11 Q. Do you believe the other stores -- strike that.

12 Is Ocean 11 Market also in the MXE district?

13 A. Yes.

14 Q. Could someone come into the MXE district today and open a  
15 new full service liquor store?

16 A. I don't think it's even possible because of the new  
17 ordinance that they did a few month ago, last year.

18 Q. So tell us what your understanding is of the ordinance that  
19 would prevent any new liquor stores from opening in that  
20 district.

21 A. What I understand from the ordinance, that notify that  
22 nobody can open liquor store, any liquor store, any kind of  
23 liquor store, not beer and wine, not any kind of liquor store  
24 in the MXE district.

25 Q. Do you believe that fact makes your liquor store special or

1 unique?

2 A. For the moment it's going to be much more unique, much more  
3 profitable because less competition possible.

4 Q. Do you know what a BTR is?

5 A. I learn about the BTR only in the last three or four month.

6 Q. What is your understanding of a BTR?

7 A. Business tax receipt.

8 Q. And is that like an occupational license?

9 A. Yes. It change the name from occupation license to  
10 business tax receipt in -- I don't recall when.

11 Q. And that's a license -- do you understand that you need a  
12 BTR to operate a business in Miami Beach?

13 A. Yes.

14 Q. Do you have BTRs for Ocean 11 Market?

15 A. Yes.

16 Q. You always had BTRs for Ocean 11 Market?

17 A. Always.

18 Q. Have you always had, except for fiscal years 2016 and '17,  
19 have you always had BTRs for Ocean 9 Liquor?

20 A. Always.

21 Q. Did there come a time in 2017 when you realized that you  
22 did not have or that your BTR was not current because you  
23 didn't renew it at some point?

24 A. I didn't understand the question. I am sorry.

25 Q. At some point did you realize in 2017 that there was a

1 problem with your BTR?

2 A. I realize in June after I receive a BTR violation, which I  
3 don't have the BTR. It's never happened to me before in the  
4 surviving of my business. I realize for some reason that's  
5 what happened.

6 THE COURT: Who usually went and got your BTR? You or  
7 somebody else at your work?

8 THE WITNESS: Usually it's either me or another woman.  
9 The name is Rochelle Malik. She is professional dealing with  
10 the city with violation and with the license and all this. She  
11 know the people and she lead me usually what to do.

12 MR. HUDSON: Your Honor, I'd like to point the witness  
13 to what's been marked as Plaintiff Exhibit 5. I don't know if  
14 he has a binder or not yet.

15 THE COURT: Did you give him one? Where is the  
16 binder?

17 For the record, all these exhibits are in evidence.  
18 You don't need to set the predicate or anything.

19 MR. HUDSON: Correct, your Honor. I am going to  
20 proceed.

21 BY MR. HUDSON:

22 Q. Sir, turn to tab 5 in that white binder that I just sent to  
23 you. Take a look at that document the first page. When you  
24 have had an opportunity to look at it, tell the court, please,  
25 what is there.

1 A. I see two violations. Usually the last three number 102  
2 and 103.

3 102, it's selling alcohol after hour of ordinance  
4 separation.

5 103 is not having business tax receipt license.

6 Q. When did you first see these two citations?

7 A. I saw this -- when I got it, I was overseas. I was in a  
8 different country, in Israel, and I saw this when I came back  
9 on June 27.

10 Q. So someone in the U.S. sent these to you while were you in  
11 Israel?

12 A. Yes.

13 Q. You saw them. You returned to the United States a couple  
14 of days later, correct?

15 A. Yes.

16 Q. And at that point did you do anything, sir, to try to  
17 resolve these violations?

18 A. Of course. I handed them to Rochelle Malik and also I  
19 handed them to Guy Shir, which is also a lawyer, and we tried  
20 to appeal the violations.

21 Q. Let's start one at a time, and I know sometimes dates are  
22 hard to remember, but do your best, please, for the Court.

23 When you came back in late June, did you personally do  
24 anything at that time other than to contact Ms. Malik?

25 A. I went to the city on June 27 and I tried to pay the BTR.

1 Q. You physically went where?

2 A. To finance.

3 Q. Describe for the Court where that is physically.

4 A. I think it's on Meridian and 18, first floor.

5 Q. So there is a counter or something you go to?

6 A. It's a counter. You take a number, you stand in line, and  
7 you do a few things over there, I mean, and --

8 Q. So you personally went in late June --

9 A. Yes.

10 Q. -- to the city. And describe for us what happened when you  
11 were at the counter.

12 A. They did not renew. They didn't let me renew the license.  
13 So I went to Rochelle office.

14 THE COURT: What did you tell the person at the  
15 counter and what did the person tell you?

16 THE WITNESS: I don't remember exactly the  
17 conversation, but I went over there, tried to renew, to pay my  
18 BTR because I got the violation of the BTR. So I went to the  
19 finance, tried to pay. For some reason they probably show me a  
20 violation or some -- I don't remember exactly. I went to  
21 Rochelle.

22 THE COURT: You went to what?

23 THE WITNESS: To Rochelle Malik, to the woman that  
24 usually take care of --

25 THE COURT: No. I am talking about when you were at

1 the finance department in Miami Beach. Tell me exactly what  
2 did you do; how much money did you give them; did you give them  
3 cash, check; who do you give it to?

4 THE WITNESS: No. You ask them for how much to pay,  
5 how much to pay. Then say they are not allow you to renew the  
6 license.

7 THE COURT: Okay.

8 BY MR. HUDSON:

9 Q. So they told you specifically that day, someone behind the  
10 counter at Miami Beach, that they would not allow to you renew  
11 the license; is that your testimony?

12 A. Yes.

13 Q. Then what did you do next?

14 A. I went to Rochelle office and I hand her the violations and  
15 I ask her to do, to appeal it.

16 Q. Explain to the court who Rochelle Malik is, to the best of  
17 your knowledge.

18 A. Rochelle Malik, she is the wife of the former mayor of  
19 Miami Beach. She is dealing with the Miami Beach city on  
20 stuff, like on violations and BTR and helping people like me,  
21 small business owners, to try to resolve problems. So she know  
22 the system, how it's working. And I work with her for a few  
23 years already and she usually help me to renew the license, or  
24 maybe she go, maybe she pay some kind of checks. Sometimes  
25 it's me.

1 Q. Earlier you told the court that you had hired folks from  
2 time to time that helped you with the BTR process prior to when  
3 you found out you had the problem, right? Ms. Malik had  
4 already been working for you for some time to help you with  
5 licensing and to help you with issues on Miami Beach, correct?

6 A. Yes.

7 Q. So when you couldn't accomplish what you wanted to  
8 accomplish trying to get your BTR, you then asked her to get  
9 involved, correct?

10 A. Yes.

11 Q. And you hired her to go down and try to pay the BTR as  
12 well?

13 A. Yes.

14 Q. Was she successful?

15 A. No. From few month.

16 Q. How many times, let's --

17 THE COURT: I am a little confused. His testimony  
18 before you started leading him was, I went to Malik, I handed  
19 her the tickets and asked her to appeal it. He didn't say I  
20 went to Malik and said, hey, they are not taking my money for  
21 the license. He said I went to Malik, handed her the tickets  
22 and said appeal it, is what I remember him saying.

23 So now all of a sudden you jump to Malik -- what he  
24 testified to is he told Malik to appeal the tickets. Appealing  
25 the tickets is not get me my BTR.



1 MR. HUDSON: I am not sure --

2 THE COURT: They are two different things. I think  
3 it's extremely important. So you need to get answers from him  
4 and he needs to provide answers.

5 MR. HUDSON: I agree with you, Judge. There is a big  
6 distinction. I am trying to --

7 THE COURT: You seem to be doing it now by telling him  
8 what he is going to say. I want to hear what he has to say  
9 rather than what you have to say.

10 MR. HUDSON: I understand.

11 BY MR. HUDSON:

12 Q. Mr. Doar, focus on my questions and the Court's questions.

13 Okay. Let's go back. You personally went down at the  
14 end of June, correct, to try to get a BTR license? Correct?

15 A. Yes.

16 Q. You had previously hired Ms. Malik to do other things for  
17 you before the BTR problem, including renewing BTRs, paying  
18 violations; is that correct?

19 A. Yes.

20 Q. After June 27 or 28 when you were unsuccessful at renewing  
21 your BTR, did you hire Ms. Malik to assist you with the BTR?

22 A. Yes.

23 Q. And what was it that you asked her to try to accomplish?

24 A. I told her -- I give her the violations and I ask her to  
25 deal with the violation. Part of the dealing with the

1 violation, as I understand, we have a few days to appeal it.

2 Q. So the violations that you are talking about is the Exhibit  
3 5 in front of you, correct?

4 A. Yes.

5 Q. The violation ending in 102 and 103.

6 A. Yes.

7 If I am not mistaken, it was one more violation.

8 Q. There was a third violation from December of '16 as well,  
9 correct?

10 A. Yes.

11 Q. That she was dealing with?

12 A. Yes.

13 Q. It was not a BTR violation, correct?

14 A. No.

15 Q. Okay. Did Ms. Malik report back to you whether she was  
16 able to resolve the BTR problem?

17 A. She always told me that it's okay, it's under control, that  
18 she's dealing with that. But she could not resolve the  
19 problem.

20 Q. She could not. Please get closer to the microphone. I  
21 can't hear you.

22 A. Rochelle Malik didn't resolve the -- she resolved the  
23 problem with the violation but not with the BTR. They never  
24 let her pay or me to pay the BTR.

25 Q. Did you specifically charge Ms. Malik with going down and

1     trying to get a BTR for you in June or July of 2017?

2     A.   Yes.

3     Q.   Did you either give her money to do so or did you have an  
4     understanding that if she paid, you would repay her?

5     A.   We have understanding.  I didn't give her money but we have  
6     understanding that, you know, she pay with her checks and she  
7     get the money from me all the time.

8     Q.   That understanding goes back years, correct?

9     A.   Yes.

10    Q.   It's a course and custom in business, correct?

11                 MR. PAPPAS:  I have got to object to the leading at  
12    this point.

13                 THE COURT:  Stop the leading.  On this part it doesn't  
14    make much difference to me, but go ahead.

15    BY MR. HUDSON:

16    Q.   When Ms. Malik reported that she was unsuccessful at  
17    getting a BTR, what did you do next?

18    A.   Also at the same time I went to a Guy, Shir which is a  
19    lawyer from --

20                 THE COURT:  Can you spell that name?

21                 MR. HUDSON:  S-H-I-R.

22                 THE COURT:  The first name Guy?

23                 MR. HUDSON:  Yes.

24    BY MR. HUDSON:

25    Q.   So you retained an attorney by the name of Guy Shir?

1 A. Guy Shir, and I also emailing the violations. And because  
2 Rochelle had a hard time to deal with the city or with the  
3 violation, he send the letter with the checks of \$100 to the  
4 city to appeal with the letter to appeal the violation.

5 Q. The violations?

6 A. And for some reason after he send the letter, the city  
7 didn't accept it.

8 Q. Mr. --

9 A. Because -- some reason.

10 Q. I am sorry. I didn't mean to cut you off.

11 A. Okay.

12 Q. So Mr. Shir was unsuccessful in getting you a BTR, correct?

13 MR. ARANA: Leading.

14 THE COURT: Sustained.

15 What he is talking about is that he sent a check with  
16 \$100 to appeal, which they didn't accept, is what he said. I  
17 mean, that's the way I understand what he said.

18 THE WITNESS: Yes. That's what I said. And I know  
19 that Mr. Shir was speaking with a woman named Cindy in the  
20 special master and she give him instruction, different  
21 instruction than what he had, you know, to appeal it.

22 BY MR. HUDSON:

23 Q. Was Mr. Shir successful at getting you a BTR in 2017?

24 A. No.

25 Q. What did you do next?

1           THE COURT: Excuse me. What did Mr. Shir do to get  
2 you a BTR in or last year before October of 2017, this past  
3 year?

4           THE WITNESS: We understand from the city that without  
5 resolve the violation we cannot get a BTR several time.

6           MR. HUDSON: May I continue, Judge?

7           THE COURT: Yes.

8 BY MR. HUDSON:

9 Q. So after Mr. Shir was unsuccessful, what did you do next?

10 A. I went to Harold Rosen.

11 Q. Who is Harold Rosen?

12 A. He is a lawyer that used to be a -- he is a former, of  
13 Miami Beach that also dealing with violations and special  
14 masters and tries to resolve problem for people like business  
15 owners.

16 Q. So you retained Mr. Rosen, correct?

17 A. Yes. I hire him and -- I hire him in July, the end of  
18 July. They lead me that without resolve the violation cannot  
19 renew the BTR. So he had a special master on August 28th. On  
20 August 28th he had an order with the special master.

21 Q. So let's break it down a little bit so everybody can  
22 understand.

23           You hired Mr. Rosen, you said, sometime in late July?

24 A. Yes.

25 Q. And was Mr. Rosen successful at making some progress on the

1 violations and the BTR?

2 A. Not on the BTR, on the violation. He had some agreement  
3 with the special master.

4 Q. Okay. How many violations were outstanding at the time  
5 that you hired Harold Rosen?

6 A. Three.

7 Q. And what were those violations for?

8 A. One violation from December 22, if I don't mistake. That  
9 say that I selling liquor before 10:00 a.m. This was maybe one  
10 week, two weeks after the new ordinance, that they change the  
11 time.

12 Q. That was one. What was the next one?

13 A. The second one, it was selling alcohol after 10:00 p.m.,  
14 and the third violation was not having a BTR.

15 Q. So when Mr. Rosen was successful at getting a special  
16 master involved, was he dealing with two of those or three of  
17 those?

18 A. With the three of them.

19 Q. All three of them, correct?

20 A. All three of them.

21 Q. Including the BTR issue, correct?

22 A. All of them.

23 Q. Was he also retained by you to assist or try to get you a  
24 BTR in 2017?

25 A. Excuse me. I didn't understand.

1 Q. Did you also hire him to help you get a BTR in 2017?

2 A. So I hired him to resolve my problem. So probably to get  
3 the BTR was part of it, yeah.

4 Q. Was he successful at getting you a BTR in 2017?

5 A. No.

6 Q. At some point did Mr. Rosen indicate that he had an  
7 agreement with the City of Miami Beach regarding the resolution  
8 of all of the violations?

9 A. I am sorry. Can you repeat?

10 Q. Did Mr. Rosen tell you at any time that he had reached an  
11 agreement with the city to solve all of the violations, all  
12 three?

13 A. Yes.

14 Q. When did he tell you that?

15 A. On August 28th.

16 Q. Of what year?

17 A. 2017.

18 Q. Did he ask you to do anything on that date?

19 A. Yes. He asked me to give, to give a check to the City of  
20 Miami Beach for \$1,000.

21 Q. Did you do so?

22 A. Yes.

23 Q. Turn to tab 1 in your book in front of you, please. Please  
24 look at that.

25 Is that the check that you are talking about?

1 A. Yes.

2 Q. So did you write that check on or about August 28 of '17?

3 A. Yes.

4 Q. Is that your signature?

5 A. Yes.

6 Q. Is that your handwriting on the rest of the check?

7 A. Yes.

8 Q. And I note that it says in the line "paid in full," and it  
9 seems to list the three violations. Is that a fair reading of  
10 that document?

11 A. Yes.

12 Q. When did you give that to Mr. Rosen or -- I am sorry. Whom  
13 did you deliver that check to?

14 A. To Mr. Rosen, in the meeting between Mr. Rosen and Rochelle  
15 Malik.

16 Q. Did Mr. Rosen tell you that after that date that he had  
17 delivered that to the City of Miami Beach?

18 A. He admit a few times in front of us.

19 Q. Did he tell you who at the City of Miami Beach he gave it  
20 to?

21 A. He gave it to Alex Baxter, I think. He is deputy of city  
22 attorney.

23 Q. Alex Boxner?

24 A. Alex Boxner.

25 Q. Did he say when he gave it to Mr. Boxner?



1 A. He said on August 28 or August 29.

2 Q. About the time, within a day or two of when you delivered  
3 the check?

4 A. Yes. That's what he said, within a day or two.

5 Q. Look at the second page there, the back of the check.

6 Do you see that?

7 A. Yes.

8 Q. It seems to have been deposited by the City of Miami Beach  
9 on 10/18/2017.

10 Do you have any idea why it would have taken the city  
11 a month and a half, if not more, to deposit that check?

12 A. You are asking me?

13 MR. PAPPAS: Foundation, your Honor.

14 THE COURT: Overruled.

15 If you know, you know. If you don't, you don't.

16 MR. HUDSON: Exactly.

17 THE COURT: I assume he doesn't know, but maybe he  
18 does.

19 Did he answer?

20 Do you know?

21 A. No, I don't know why.

22 BY MR. HUDSON:

23 Q. After you gave Mr. Rosen the check, did you personally go  
24 down and try to obtain a BTR now that the violations were  
25 cleared?

1 A. I don't remember if after I give him the check I went to  
2 try to pay the BTR.

3 Q. Let's go to --

4 A. I tried on the month of September.

5 Q. I know. We are jumping ahead.

6 Turn to page 7 of your binder, please.

7 Have you seen that document before?

8 A. This is the agreed order. Yes.

9 Q. What do you understand this order to do?

10 A. I understand that this order, it's agreement between the  
11 Beach Blitz to the City of Miami Beach regarding the three  
12 violation that say they agree that \$3,000 resolve the problem.

13 Q. Do you have any idea why it took a month from August 28  
14 when you delivered the check to Mr. Rosen told you he had a  
15 deal for this order to be prepared and signed?

16 A. I don't have any idea.

17 Q. When did you first see this order?

18 A. Excuse me?

19 Q. When did you first see this order?

20 A. This order, on August -- when I see the order, I think on  
21 September 28.

22 Q. Did Mr. Rosen give it to you?

23 A. Yes.

24 Q. At that time when you received it, did you personally go  
25 down and try to get your BTR again?

1 A. Yes.

2 Q. September 28 was 2017 was a Thursday, was it not?

3 A. Yeah, Thursday.

4 Q. Do you recall?

5 A. It's either was Thursday or Friday.

6 THE COURT: It was a Thursday. I will take judicial  
7 notice of that.

8 MR. HUDSON: Thank you, Judge.

9 BY MR. HUDSON:

10 Q. Do you recall, did you go down on the 28th or 29th, or  
11 both?

12 A. Either the 28th or the 29th. Either was Thursday or  
13 Friday.

14 Q. And so you personally once again went down to the city  
15 first floor counter, correct?

16 A. Yes.

17 Q. And you personally asked to please allow to you get a BTR,  
18 correct?

19 A. Yes.

20 Q. What did they tell you?

21 A. They tell me that they are not going to issue me a BTR  
22 because I have the violations.

23 MR. HUDSON: One moment, your Honor.

24 THE COURT: Yes.

25 MR. ARANA: Your Honor, we were presented with a

1 document this morning that plaintiffs want to add to an exhibit  
2 list. It appears to be a city record, but we haven't had an  
3 opportunity to confirm.

4 We object on timeliness grounds.

5 THE COURT: What is it?

6 MR. HUDSON: It was potentially a rebuttal or  
7 impeachment exhibit. It's a record that basically shows  
8 internally why they closed his license and that it couldn't be  
9 renewed or replied for. I believe the witness will testify  
10 that it was given to him that day.

11 THE COURT: Well, I will allow it subject to the city,  
12 if you determine that it's not a record, then let me know  
13 afterwards and I will take the opportunity to strike it.

14 MR. HUDSON: This will be admitted?

15 MR. BYERS: Your Honor, we have an objection. It's  
16 dated after September 28 and 29th. There's actually markings  
17 on there showing October 6th of 2017. So therefore it is  
18 impossible --

19 THE COURT: You should have saved that for  
20 cross-examination.

21 MR. HUDSON: We don't know what it is. That's the  
22 problem, Judge. But he is going to testify that he was given  
23 this by the city.

24 THE DEPUTY CLERK: Speak into the microphone.

25 MR. HUDSON: May I approach the witness, your Honor?

1           THE COURT: We will mark that as 17. Is that your  
2 next exhibit?

3           THE DEPUTY CLERK: Yes.

4           Can I have a brief description of it. Brief.

5           MR. HUDSON: It is a screenshot from the City of Miami  
6 Beach that has, for lack of a better word, a rectangle in the  
7 middle of it, that we can't see what it is, and I can't tell  
8 you when it's dated, to be honest with you. Maybe the city  
9 can, if they know how to read it. But we can't tell when it's  
10 dated.

11          THE COURT: Okay. Give it to the witness to look at  
12 it.

13          MR. HUDSON: Do you need a copy?

14          THE DEPUTY CLERK: I don't.

15          THE COURT: I do.

16 BY MR. HUDSON:

17 Q. Sir, you went down to the city on either the Thursday or  
18 the Friday and, once again, they told you they could not give  
19 you the BTR, correct?

20 A. Yes.

21 Q. Did you indicate to them at that time that your violations  
22 had been resolved?

23 A. Yeah.

24 Q. And what did they say? What was their response?

25 A. I have a violation, that they cannot renew the BTR.

1 Q. Do you understand that to mean that their system had not  
2 been updated or did you understand that to mean something else?

3 A. That's what Rochelle told me, that probably the system is  
4 not updated.

5 Q. So when you were told you couldn't do it, did you call  
6 Ms. Malik or did you ask her to go do it as well?

7 A. Yes. Yes. I told her that I can't renew it.

8 Q. Do you know whether Ms. Malik went down there that Thursday  
9 or Friday to try to renew it?

10 A. I am not sure.

11 Q. But you were unable to, correct?

12 A. I wasn't.

13 Q. You went down there for the specific purpose of renewing  
14 it?

15 A. Correct.

16 Q. You had the financial capability of renewing it at that  
17 time?

18 A. Of course. The financial was no problem at any time.

19 Q. Okay. So next Monday was October 1st, correct?

20 MR. HUDSON: The court will take judicial notice of  
21 that?

22 THE COURT: Next Monday was what?

23 MR. HUDSON: October 1.

24 THE COURT: No, that's not true. October 2.

25 MR. HUDSON: Okay. Thank you, Judge.

1 THE COURT: October 1st was Sunday. At least that's  
2 what my government calendar says.

3 BY MR. HUDSON:

4 Q. So the following week, starting on October 2nd, any time  
5 during that week did you go down and try to get the BTR?

6 A. Which week are you talking about?

7 Q. The Thursday or Friday was the 28th --

8 A. Yes.

9 Q. -- and 29th.

10 The next Monday or any day that following week  
11 starting on October 2nd, as the court has just indicated, did  
12 you personally go down to the city to try to get a BTR?

13 A. Yes, on October 3. On October 3.

14 Q. Did you go on October 3 for other reasons as well?

15 A. Yeah. I renew my Ocean 11 BTR, because they didn't want to  
16 renew it on September 28. They told me that I had a violation.

17 Q. So turn to page 9.

18 THE COURT: You say page 9. You mean Exhibit 9?

19 MR. HUDSON: Exhibit 9, please.

20 BY MR. HUDSON:

21 Q. Please, in the book. You are at tab 9.

22 Is that an invoice for Miami Beach for \$966?

23 A. Yes.

24 Q. What is that, sir?

25 A. It's a payment of --

1 THE COURT: You need to talk into the microphone.

2 A. It's a license for Ocean 11 Market.

3 Q. So is this something that was given to you the day that you  
4 were -- on October 3 when you were at the city? Did they give  
5 this to you that day so you could tell how much to pay?

6 A. No, they didn't give me this paper. They give me the  
7 receipt.

8 Q. So you had this paper in advance?

9 A. No, I didn't have. They give me this on October, on  
10 October 9.

11 Q. So turning to Exhibit 10, tell us what Exhibit 10 is.

12 A. This is the bill for -- this is the bill for Ocean 11  
13 Market.

14 Q. Is this the receipt that was physically given to you on  
15 October 3 when you paid the bill for Ocean 11 Market?

16 A. I don't remember. But it's another receipt that I remember  
17 they give it to me. I don't remember this one was together.

18 Q. Look at the date, sir.

19 A. Yes, yes. Actually, yes. They give me this. They give me  
20 this and they give me also another receipt.

21 Q. Okay. So this Exhibit 10 was physically given to you by  
22 someone at the City of Miami Beach on October 3, correct?

23 A. Yes.

24 Q. At that same time you attempted to pay the BTR for your  
25 other business, Ocean 9, correct?



1 A. Of course.

2 Q. They refused?

3 A. They refused to take the money.

4 Q. Did they tell you why they refused?

5 A. Because I have violations.

6 Q. Because you had open violations?

7 A. Open violations.

8 Q. Consistent with everything they have told you in the past,  
9 correct?

10 A. Yes.

11 Q. Do you know if Ms. Malik or Mr. Rosen or Mr. Shir or  
12 anybody else continued to try to ask the city to --

13 A. All the time. All the time. Every day. Every day phone  
14 calls.

15 Q. Ms. Malik's job, in fact, was to stay on top of this,  
16 correct?

17 A. Yes.

18 Q. And she was unsuccessful, correct?

19 A. Yes. Also, Harold Rosen was calling.

20 Q. Turn to Exhibit 11, please. Tell the court what Exhibit 11  
21 is, if you know.

22 A. This is the receipt and my check from the city after I paid  
23 the BTR of Ocean 11.

24 Q. I am looking at --

25 A. Eleven you said?

1 Q. -- Exhibit 11. I think that's 10, sir.

2 A. Sorry.

3 Q. Eleven should be a document, a Miami Beach document  
4 regarding the closing of violation 102.

5 A. Okay. The exhibit it's after the number, right? After the  
6 number?

7 Q. It should be after the tab, correct.

8 Is that what you are looking at, sir?

9 A. Yeah, I think so, if it's regarding violation ending 102.

10 Q. Yes.

11 A. Yes, that's what I have.

12 Q. Do you know why only that violation was closed out on 10/4,  
13 yet you had paid all three violations at one time?

14 MR. PAPPAS: Objection, your Honor. No foundation  
15 whatsoever.

16 THE COURT: On the next day it shows all three were  
17 closed out on the same day. So it's a bad question to start  
18 with.

19 MR. HUDSON: Your Honor, part of our problem is we  
20 don't have access to the records. We are using what we have.  
21 But there were three violations.

22 THE COURT: You just asked the question why was 02  
23 closed out. You look on the next page, 03 was closed out on  
24 the next day.

25 MR. HUDSON: But the third wasn't. That's where we

1 are going.

2 THE COURT: Ask him if he knows why the third wasn't  
3 closed out.

4 MR. PAPPAS: There's no foundation -- he hasn't  
5 established that it was or it wasn't, and he can't with this  
6 witness.

7 THE COURT: Overruled. He can if he knows. Hearsay  
8 is admissible here. Maybe someone from Miami Beach told him  
9 it's not closed out because we don't like you or something. I  
10 don't know what they told him.

11 MR. PAPPAS: Let's hear.

12 BY MR. HUDSON:

13 Q. Turn to Exhibit 12.

14 A. Violation 704.

15 Q. Yes.

16 Do you have any idea why that violation was closed out  
17 on 10/13 as opposed to 10/4?

18 A. What is this violation?

19 Q. Sir, if you know, you do. If you don't, you don't.

20 THE COURT: I think that's the earlier one. The  
21 December 2016, if I recall.

22 MR. HUDSON: Correct.

23 A. Yes, I recall. This violation, it's for before 10:00 a.m.

24 BY MR. HUDSON:

25 Q. So you paid all three violations at one time with one

1 check, correct?

2 A. Yes.

3 Q. You have no idea why one lasted for two weeks into October,  
4 correct?

5 A. No, I don't.

6 MR. PAPPAS: Leading.

7 THE COURT: Sustained.

8 MR. PAPPAS: No foundation.

9 A. This is part of the reloader.

10 BY MR. HUDSON:

11 Q. So to the best of your ability, sir, how many times between  
12 you, Ms. Malik, Mr. Shir, and Mr. Rosen do you believe Beach  
13 Blitz and Ocean 9 tried to get the 2016/2017 BTR before  
14 October 1st of 2017?

15 A. Many, many times. Many times. I don't remember all the  
16 dates, but many times.

17 Q. How much would the BTR have been?

18 A. Excuse me?

19 Q. How much would the BTR have been?

20 A. What do you mean?

21 Q. Money. How much would it cost?

22 A. About, I think, \$2,000 and change.

23 Q. Beach Blitz and Ocean 9 had the financial ability to pay  
24 that, correct?

25 A. Of course.

1 Q. Today if you were to apply for a new license, do you  
2 believe the City of Miami Beach would give you a new license?

3 A. I don't believe because of the new ordinance.

4 Q. That does what? Which ordinance?

5 A. That I'm not allowed to have -- if I went to renew, you ask  
6 me?

7 Q. No. To apply for a new license.

8 A. To apply for a new license. They are not going to give me  
9 a liquor license.

10 Q. Please look at the document that we gave you to the right  
11 that's marked as 17.

12 A. This one?

13 Q. Yes.

14 A. Yes.

15 Q. Was that document given to you by someone at the City of  
16 Miami Beach?

17 A. Yes.

18 Q. Do you recall which of the visits that you went that it was  
19 given to you?

20 A. I think this give it to me, I think, I think on October --  
21 I think on October -- Monday. It was a Monday, I think.

22 Q. Monday?

23 THE COURT: Monday was October 2nd.

24 THE WITNESS: No, the next, following Monday. After  
25 October 6th.

1 BY MR. HUDSON:

2 Q. So let's talk about October 6th.

3 October 6th was a Friday.

4 A. Yes.

5 Q. What happened on October 6th?

6 A. October 6th, about 5:00 o'clock, two law code enforcement  
7 came --

8 Q. Speak up, please.

9 A. On October 6th, about 5:00 o'clock afternoon, two code  
10 enforcement came to my store with two policeman, Miami Beach  
11 policemen, and give me violation for not having a BTR. They  
12 told me that I have to shut down my store, and I told them that  
13 it's impossible. I have agreed order for the violation. I  
14 didn't understand exactly what they want from me. And they  
15 told me within five minutes I am not shutting the door of the  
16 business, I am going to be arrested.

17 I tried to talk to them, to show them paper, and they  
18 told me, listen, we give you five minutes to close the door or  
19 we taking you right now. There was very, very tough with me.  
20 They didn't want to see any paper of mine, just want me to sign  
21 and shut down the doors.

22 Q. That was a Friday, correct?

23 A. Yes.

24 Q. Are you aware of any contact on behalf of Beach Blitz the  
25 day before that event?

1 A. What -- I don't understand.

2 Q. Do you recall -- strike that.

3 MR. HUDSON: Judge, I have no further questions.

4 THE COURT: Any cross-examination?

5 MR. PAPPAS: Yes, your Honor.

6 May I approach to give Mr. Doar a copy of the exhibits  
7 as well?

8 CROSS-EXAMINATION

9 BY MR. PAPPAS:

10 Q. Mr. Doar, my name is Gary Pappas.

11 You and I have never met before, right?

12 A. Right. How are you doing?

13 Q. Nice to meet you.

14 A. Nice to meet you.

15 Q. Your spoken English is a little broken. My question for  
16 you, and I don't mean this personally at all, do you read  
17 English?

18 A. I read. I read, not perfect.

19 Q. Not perfect?

20 A. Yes.

21 Q. But you can read English?

22 A. I can read, but not perfect.

23 Q. Okay. Now, does Beach Blitz own any other businesses  
24 besides the package store on 865 Collins, Ocean 9, and the  
25 market on 1100 Collins, Ocean 11?

1 A. No.

2 Q. Those are the only two businesses that Beach Blitz owns and  
3 operates?

4 A. Yes.

5 Q. Okay. And you are the sole shareholder, sole owner?

6 A. Yes.

7 Q. And just in general, given the location of those markets,  
8 is it fair to say that customer base is tourists?

9 A. Yes.

10 Q. Almost exclusively, right?

11 A. Yes. I would say 85 percent.

12 Q. Before December 16, 2016, did either of your businesses --  
13 strike that for a second.

14 Do you go by the Ocean 9, Ocean 11, or do you go by  
15 the address? What's the best way you want to talk about them?

16 A. Any way you want.

17 Q. I have in my mind the address.

18 Ocean 9 is 865 Collins, correct?

19 A. Yes.

20 Q. And Ocean 11 is the 1100?

21 A. Yes.

22 Q. So back to my question. Before December 16, 2016, had  
23 either Ocean 9 or Ocean 11 ever received any type of citation  
24 from the City of Miami Beach for any reason?

25 A. Before? What you mean before?



1 Q. December 16, 2016 is when Ocean 9 received a citation by  
2 the City of Miami Beach for selling alcohol too early, right?

3 A. I don't remember.

4 Q. Well, I mean, it's in all of our exhibits.

5 If you will just turn to -- I didn't want to get hung  
6 up on that, but we could just turn to your exhibits.

7 MR. HUDSON: Yours and ours or yours?

8 MR. PAPPAS: He can do them off mine, too. I think  
9 it's in mine. I will go to mine.

10 BY MR. PAPPAS:

11 Q. If you will turn in the black binder to tab 10E,  
12 Plaintiff's 10.

13 Tell me when you are there. Are you there?

14 A. Yes.

15 Q. Okay. That is the citation that the City of Miami Beach  
16 issued to 865 Collins Avenue, which is Ocean 9, on December 21,  
17 2016 at 8:39 in the morning for selling alcohol too early in  
18 the morning?

19 A. I recognize this. I thought you ask me about December 16,  
20 2016. I'm sorry.

21 Q. That's the date of Defendants' 10, correct?

22 THE COURT: No, it's December 21.

23 BY MR. PAPPAS:

24 Q. My apologies. I was thinking 2016. December 21. Okay.

25 A. I recognize it.

1 Q. Right. No doubt that that citation was issued to your  
2 store on December 21st at 8:39 in the morning, right?

3 A. Yes.

4 Q. Before December 21, 2016 -- let's start with Ocean 9. Had  
5 Ocean 9 ever received a citation from the City of Miami Beach?

6 A. I think so. I don't remember, but I think so, after that  
7 code enforcement on my store.

8 Q. And how about Ocean 11, had it received citations?

9 A. I believe so.

10 Q. All right. So let's just talk about 865 for the time  
11 being. If you will turn to tab 4 in the black binder,  
12 Defendants' 4.

13 That is the original BTR issued by the City of Miami  
14 Beach for 865 Collins Avenue, correct?

15 A. The first BTR.

16 Q. The very first BTR?

17 A. I am getting confused.

18 Q. That's all right.

19 You are on Defendants' 4, correct? You are in number  
20 4?

21 A. I think so.

22 Q. So let's start up in the upper left -- yes, you are in 4 --  
23 upper left-hand corner. The trade name is Beach Blitz.

24 Do you see that?

25 A. Yes.

1 Q. And it says in care of you, Doran Doar, correct?

2 A. Yes.

3 Q. And then it has an address, 1344 Northwest 5th Court in  
4 Plantation?

5 A. Correct.

6 Q. Who lives there?

7 A. Me.

8 Q. Is that where you live today?

9 A. Yes.

10 THE COURT: You have got about a half an hour more to  
11 cross-examine this fellow. If you want to go through each of  
12 these, you are welcome to. Nobody is saying -- I don't know  
13 what this has to do with his cross-examination or how it's  
14 moving the ball for you.

15 MR. PAPPAS: Judge, I will move on.

16 BY MR. PAPPAS:

17 Q. That's where you live, right?

18 A. Yes.

19 Q. Do you receive mail --

20 A. Yes.

21 Q. -- at that address?

22 A. Yes.

23 Q. Related to Beach Blitz?

24 A. Yes.

25 Q. And if you go to the right-hand side of Defendants' 4, it

1 shows that the beginning date for this BTR is October 1, 2011,  
2 correct?

3 A. Yes.

4 Q. That was the first year Ocean 9 had a BTR?

5 A. I don't think so.

6 Q. All right. If you turn to --

7 A. You confuse me, because Beach Blitz -- Beach Blitz, if you  
8 call it BTR or occupational license before this.

9 Q. But not for the 865 location?

10 A. Of course for the 865 location.

11 Q. Okay. And so if you turn to, if you turn to the second  
12 page of Defendants' 4, you see that there is an application;  
13 correct? Do you see the application on the second page of  
14 Defendants' 4, with handwriting on it?

15 A. Yes.

16 Q. Is that your handwriting?

17 A. No.

18 Q. That's not your handwriting?

19 A. No.

20 Q. How about the signature on the third page, is that your  
21 signature?

22 A. No.

23 Q. That's not your signature either?

24 A. No.

25 Q. It says your name. Your name is printed there. Is that

1 correct?

2 A. Yes.

3 Q. So someone forged your signature. On June 15, 2012 someone  
4 forged your signature on an application for a BTR with the City  
5 of Miami Beach?

6 A. You are talking on the right side?

7 THE COURT: Talk into the microphone. We can't hear  
8 you, sir. What did you say?

9 Sir, look at me when I ask you a question. You have  
10 got to answer. I said, what did you say? Look at me again.

11 THE WITNESS: Yes.

12 THE COURT: You said something when you were facing  
13 the other way. I didn't hear it. You need to repeat what you  
14 said.

15 THE WITNESS: This is not my signature.

16 THE COURT: You said something after that.

17 THE WITNESS: I don't remember. Sorry.

18 BY MR. PAPPAS:

19 Q. Do you recognize the signature? Do you recognize the  
20 handwriting or the signature?

21 A. No.

22 Q. Is this Ms. Malik's signature and handwriting?

23 A. No. I don't know.

24 Q. In the years from 2011, 2012, 2013, 2014, did you receive  
25 renewal notices from the City of Miami Beach in or about July

1 of each year notifying you that your BTR would expire on  
2 September 30th?

3 A. Usually, yes.

4 Q. Yes.

5 To your address at home, correct?

6 A. Yes.

7 Q. And then what would you do with those renewal notices?

8 A. I renew.

9 Q. Before September 30, before the BTR expired, correct?

10 A. Sometime I was late.

11 Q. Sometimes you were late. But would you go down personally  
12 and pay the check and renew?

13 A. I don't remember all the situation, but we renew the BTR.

14 Q. Well, I want to be clear. When you say we renew. Is there  
15 anyone else that's associated with Beach Blitz that would go  
16 down and renew BTR applications?

17 A. Yes.

18 Q. Who?

19 A. If it's not me, it was Rochelle Malik.

20 Q. Okay. Now did you receive -- turn to Defendants' 7. Are  
21 you on Defendants' 7? Tab 7.

22 A. I think so.

23 Q. What is the address 865 Collins Avenue D?

24 A. Yes.

25 Q. Is that the address of --

1 A. Yes. This is the address of the Ocean 9 Liquor.

2 Q. This is an invoice from the City of Miami dated July 1,  
3 2016, correct?

4 A. Yes.

5 Q. For the renewal of your BTR for that location?

6 A. This is what it look like. I never receive it.

7 Q. You never received it?

8 A. I never receive it.

9 Q. Okay. You received one, though, for 1100 Collins Avenue  
10 because you renewed that license?

11 A. I receive for -- yeah, I receive it to 13441 Northwest 5th  
12 Court.

13 Q. For 1100?

14 A. Yes.

15 Q. And you renewed 1100?

16 A. Yes.

17 Q. Why didn't you renew 865 Ocean 9 when you renewed 1100?  
18 You knew they expired on the exact same date. Why didn't you  
19 do that?

20 A. Because I didn't have the renewal, and I don't recall why,  
21 what's happened. I don't remember what's happened, why.

22 Q. You knew --

23 A. I don't remember the situation.

24 Q. You knew that the BTRs expired on the exact same day year  
25 after year after year, correct?

1 A. I do. I do remember the dates.

2 Q. Right. So when you renewed 1100, Ocean 11, for the  
3 2016/2017 year beginning on October 1, 2016, you could have  
4 renewed Ocean 9, but you didn't, right?

5 A. If I had a choice to renew it from the city, I would renew  
6 it for sure. If something happened with the city -- I don't  
7 remember what it was before -- they not allow me to renew the  
8 license.

9 Q. You are testifying under oath here today that when you  
10 renewed Ocean 11 for the 2016/2017 year, you tried to renew  
11 Ocean 9 and the city told you you could not; that's your  
12 testimony?

13 A. Yes.

14 Q. Did you bring a check?

15 A. I asked them, you know, to give me the bill. They didn't  
16 give me the bill.

17 Q. When you went down --

18 A. How can I make a check if I don't have the bill. I don't  
19 know how much.

20 Q. Did you bring your checkbook with you?

21 A. Of course. Always I have my credit card. I have anything  
22 to pay. It's not a problem, the payment.

23 Q. When did you go back -- so this was what, before  
24 September 30, 2016, you renewed Ocean 11 and you tried to renew  
25 Ocean 9 and the city wouldn't give you an invoice; is that what



1 you are saying?

2 A. I said that I tried to pay before, before.

3 Q. I am talking -- I want to be very clear about the time we  
4 are talking about. We are talking about before your BTR  
5 expired on September 30, 2016.

6 Both of your BTRs for your two businesses expired on  
7 the exact same date, correct?

8 A. Should, because this is from the Miami Beach. Yes.

9 Q. You got a renewal notice for Ocean 11 and you usually got a  
10 renewal notice for Ocean 9, but you didn't this year, correct?  
11 That's your testimony?

12 A. That I didn't renew? I don't remember the situation when I  
13 renew exactly on Ocean 11. It was before 2016, 30th of  
14 September or not, I don't remember. Maybe it was after.

15 Q. Well, sir, you know that the city charges you a late fee if  
16 you renew after October 1, correct?

17 A. Yes, I know.

18 Q. You would always try to renew before to save the late fee,  
19 correct?

20 A. You always try to save the money, but it's --

21 Q. So I am asking a very specific question. You went down and  
22 renewed your license, your BTR license, for Ocean 11 before  
23 September 30, 2016?

24 A. I don't think I renew it before September 30, 2016. I  
25 don't think I -- I renew Ocean 11 before.

1 Q. After?

2 A. September.

3 Q. After.

4 A. Maybe after sometime, yeah. I don't remember the date.

5 Q. You only own two businesses. They have two BTRs. You went  
6 down to renew Ocean 11 just like you had year after year after  
7 year. You always have two to renew.

8 Are you saying you tried to renew Ocean 9 when you  
9 renewed Ocean 11?

10 A. I don't remember what was the situation.

11 Q. Okay. So you don't remember?

12 A. I don't remember.

13 Q. You are not testifying --

14 THE COURT: Wait. He is talking.

15 MR. HUDSON: Your Honor, asked and answered as well.

16 THE COURT: Well, he's given a couple of different  
17 answers is the problem.

18 BY MR. PAPPAS:

19 Q. Finish your answer.

20 A. I don't remember exactly the situation when I paid the  
21 2016, '17 for Ocean 11 Market. I don't remember the situation,  
22 if it was Ocean 9 or not, if I try, and I don't remember the  
23 situation.

24 Q. So you are not saying that the city prohibited you from  
25 renewing Ocean 9 when you renewed Ocean 11, correct?

1 A. I don't remember the situation. I don't remember the  
2 situation. I don't remember.

3 Q. There is no doubt whatsoever as we sit here today that your  
4 Ocean 9 BTR expired on September 30, 2016, correct?

5 MR. HUDSON: Objection to the extent it calls for a  
6 legal conclusion.

7 THE COURT: Overruled.

8 BY MR. PAPPAS:

9 Q. Correct?

10 A. Yeah. According to the papers, yes.

11 Q. Did you display your BTR license prominently and  
12 conspicuously at the location just as the BTR says you are  
13 supposed to?

14 A. Usually, yes.

15 Q. Posted like right above the cash register or something,  
16 right?

17 A. Usually, yes, something like that. I have a folder with --  
18 I should have a folder with the license.

19 Q. But you know the license says it has to be posted somewhere  
20 conspicuously, right?

21 A. Yes.

22 Q. You had the license posted at your store, right?

23 A. Usually, yes.

24 Q. And you work at the store, don't you?

25 A. I work. Of course I work.

1 Q. And so it was sitting there for nine months expired and you  
2 didn't notice and you didn't remember that it was expired for  
3 nine months, correct?

4 A. It's possible I didn't put, I didn't put it.

5 Q. You didn't notice. You testified on direct examination  
6 that the first time you found out that you did not have a BTR  
7 for Ocean 9 --

8 A. Was June 27th.

9 Q. June 27th?

10 A. June 25, yeah.

11 Q. Well --

12 A. Twenty-five, 27.

13 Q. So what happened was you were in Israel on June 25,  
14 correct?

15 A. Yes.

16 Q. And one of your clerks sent you the notices of violation in  
17 Israel?

18 A. I think so.

19 Q. And you came right back, correct?

20 A. Yes.

21 Q. And by the way, do you do the bookkeeping for your stores?

22 A. Most of it.

23 Q. Right. So don't you have a journal somewhere that says BTR  
24 license every year? And you knew you wrote a check for Ocean  
25 11 but you didn't write one for Ocean 9?

1 A. Usually I don't do mistakes. Usually I don't do mistakes.

2 Q. So you come back and -- let me back up for a second.

3 I want you to go back to Defendants' 10. Okay. Black  
4 binder number ten. Right. That's the December 16 violation.  
5 Okay.

6 THE COURT: December 21.

7 BY MR. PAPPAS:

8 Q. December 21, 2016. I will get my year. December 21.

9 Are you there, sir?

10 A. I think so, yeah.

11 Q. Did you receive this violation personally? Did you look at  
12 it in person?

13 A. Yes. I didn't receive it personal, but I look at it.

14 Q. Did you obtain a copy of it at or about the time of  
15 December 21, 2016?

16 A. If I had a copy of this violation, that's what you are  
17 asking me?

18 Q. Yes. Within 24 hours of getting the violation you had a  
19 copy of it, right?

20 A. I am not sure about 24 hours.

21 Q. Had you ever seen -- you said you thought you had received  
22 violations before. You are familiar with the City of Miami  
23 Beach's violation, aren't you?

24 A. Yes.

25 Q. Right at the bottom it says: Important. Appeal and ADA

1 information on the back.

2 Do you see that right at the bottom of the ticket?

3 A. What it says?

4 Q. Important?

5 A. Important appeal.

6 Q. Important appeal, right?

7 A. Yeah.

8 Q. And then turn over to the next page. You have read these  
9 before, haven't you?

10 A. Usually I give it to -- when it's come to violation, I give  
11 it to professional people to deal with it.

12 Q. You know that the city's policy is that you can appeal a  
13 ticket within 20 days, correct?

14 MR. HUDSON: Objection on legal conclusion, your  
15 Honor.

16 THE COURT: Overruled.

17 BY MR. PAPPAS:

18 Q. Correct.

19 A. I know that it's a different time for appeal for different  
20 kind of violations. It's not all the same.

21 Q. And this ticket says right on the back of it that it must  
22 be appealed within 20 days by a written request to the clerk.  
23 Do you see that?

24 A. No. Where is it?

25 MR. PAPPAS: May I, your Honor?

1 THE COURT: Yes.

2 MR. HUDSON: I will object to this line of questioning  
3 because the special master accepted jurisdiction and resolved  
4 these three violations.

5 THE COURT: Overruled.

6 BY MR. PAPPAS:

7 Q. Sir, you never appealed this ticket, did you? Within 20  
8 days you never filed a written appeal of this ticket, correct?

9 A. No, I didn't.

10 Q. Okay. So now let's go to December 25th. You find out  
11 about the new hour violation, different than December 21, and  
12 you find out that for the first time that you did not have a  
13 BTR.

14 Are you with me?

15 THE COURT: I think you meant June 25. You said  
16 December 25, I think. But go ahead.

17 MR. PAPPAS: My apologies. It's dyslexia kicking in.

18 THE COURT: Maybe you are thinking about Christmas. I  
19 don't know.

20 BY MR. PAPPAS:

21 Q. And you personally went right down to the finance  
22 department in person with the violations, correct?

23 A. Yes.

24 Q. That's what you testified. You went down in person with  
25 the violations. You went to the finance department and you

1 have got your number. You waited to be called. You met face  
2 to face with a human being at the City of Miami Beach finance  
3 department, correct?

4 A. Yes.

5 Q. At that point in time you testified on direct examination  
6 that you were told -- in fact, I wrote that they showed you  
7 that you had an outstanding violation, correct?

8 A. Yes.

9 Q. That was the December 21, 2016 ticket that you did not  
10 appeal, correct?

11 A. I don't remember which one it was.

12 Yes. Yes.

13 Q. And they told you, the people at the finance department  
14 told you that in order to renew your BTR license you had to pay  
15 the ticket?

16 MR. HUDSON: Objection. Speculation. He is  
17 testifying to what someone at the counter told him. He can  
18 testify differently.

19 THE COURT: That's what happens when you get to lead.  
20 He says yes or no.

21 MR. HUDSON: It's leading, but it's an inappropriate.

22 THE COURT: Stand up if you are objecting, and the  
23 objection is overruled.

24 You can answer the question, sir.

25



1 BY MR. PAPPAS:

2 Q. You can answer, sir.

3 A. Ask it again, the question, please.

4 Q. When you went down with the June 25th tickets on June 27th  
5 in person and met with another human being from the City of  
6 Miami Beach, they showed you you had an outstanding violation  
7 back from December that you had to pay first in order to renew  
8 your BTR license, correct?

9 A. I am not sure what they show me. I am not sure what they  
10 show me.

11 Q. They showed you you had a violation?

12 A. They told me that I cannot renew the license.

13 Q. Because you had an outstanding violation, correct?

14 A. I don't remember for what. I think because of having  
15 violations.

16 Q. Right, and they told you all you have to do, sir, is pay  
17 the violation and you can renew your BTR license?

18 MR. HUDSON: Objection, your Honor. He's asked three  
19 times and he's answered the same way three times.

20 THE COURT: He hasn't answered the question yet.

21 You need to stand up if you want to be recognized in  
22 this courtroom. Okay?

23 MR. HUDSON: He said he doesn't remember three times,  
24 your Honor. He's trying to get him to answer it. He says I  
25 don't remember.

1           THE COURT: The question is, sir, they told you all  
2 you have to do, sir, is pay the violation and you can renew  
3 your BTR license. Answer that question, please.

4 A. I don't remember this exactly what they told me.

5 BY MR. PAPPAS:

6 Q. Was it something sort of like that if not exactly?

7 A. What I understand is that I cannot renew my license because  
8 I have violations.

9 Q. Right. Did you ask how do I pay for the violations so I  
10 can renew? Did you ask that?

11 A. I went to Rochelle Malik.

12 Q. No. I am talking about -- we are not at Rochelle Malik.

13 A. I don't remember exactly the conversation that I had with  
14 cashier over there, the officer in the finance.

15 Q. We are sitting there on December 27th. You are sitting  
16 there talking to a finance department --

17           THE COURT: I am sorry. You keep using the wrong  
18 date. It's June 27.

19           MR. PAPPAS: June 27th.

20 BY MR. PAPPAS:

21 Q. You are sitting face to face at the finance department on  
22 June 27th. They told you you could not renew because you had  
23 an outstanding violation. Correct?

24 A. Something make a noise like that over here like boom, boom  
25 something. Like a noise.

1 Q. They told you that you could not renew.

2 THE COURT: Now asked and answered. Let's go.

3 BY MR. PAPPAS:

4 Q. Did you simply ask while you were sitting there --

5 A. They told me -- I understand in general that I need to  
6 resolve the violations in order to come and pay my license.

7 Q. Okay.

8 A. That's what I understand.

9 Q. And --

10 A. I didn't understand --

11 Q. And did you say, great, how do I resolve my violation from  
12 December? Where do I pay it?

13 A. That's what I say great, to who?

14 Q. You wanted your BTR, didn't you?

15 A. What you mean I say great?

16 Q. They told you you had to resolve the violation in order to  
17 get your BTR, right?

18 A. Yes. They told me that I need to resolve my violations in  
19 order to pay my BTR.

20 Q. And resolve the violation from back --

21 THE COURT: Hold on a second. He is saying violations  
22 and you are saying violation. So you can't change his  
23 testimony. He is saying violations, which would include the  
24 December 1 and the one that he got two days before, is what his  
25 testimony is that he was told he had to resolve.

1 BY MR. PAPPAS:

2 Q. Right. And so you distinctly recall them telling you on  
3 December 27th that you had to resolve all three of your  
4 violations to get your BTR?

5 A. June 27. I don't understand.

6 THE COURT: You have to get the dates.

7 MR. HUDSON: Creating confusion.

8 A. December 27. I am sorry.

9 BY MR. PAPPAS:

10 Q. When you were there in person on June 27th --

11 A. When I was there on June 27.

12 Q. -- did the clerk from the finance department tell you you  
13 had to resolve all three outstanding violations or only the  
14 December 21, 2016 violation in order to renew your BTR?

15 A. I understand that I cannot renew my BTR until I resolve my  
16 violation. I don't know what it mean, but I assume it's not --  
17 they don't mean that the other two because it was new. But I  
18 assumed that it was maybe the other.

19 Q. You understood and assumed it was the December violation,  
20 which you didn't appeal, right?

21 A. That I had a violation and I need to -- I didn't know  
22 exactly which violation. They show you a paper all the time  
23 with more than ten violations. And some violation close, some  
24 violation open, some violation this. It's very hard for me to  
25 read this paper when it's with a lot of violation. It's taking

1 time to understand what's going on. So I am going to a  
2 professional people and I am trying to get explanation how it's  
3 work. I don't know exactly how it's work because --

4 Q. Before you went to professionals, while you were still  
5 sitting there, did you say to the clerk, I have my checkbook, I  
6 am ready to pay for the December violation, I have the money,  
7 where do I pay so can I renew my BTR? Did you do that?

8 A. I came to pay. I came to get my BTR.

9 Q. Did you do that? Did you ask?

10 A. Probably. I probably say it. I don't remember exactly  
11 what it was I said, but probably I came to pay my BTR. What I  
12 came for what? I came to finance to what? To find out about  
13 my violation? To find out about my violation you go to the  
14 code enforcement.

15 Q. Did you ask how much you owed for your BTR?

16 A. I think so.

17 Q. Okay. Turn to Defendants' Exhibit 15 in the black book.  
18 The black book. That's the white one. The black one. Sir,  
19 the other one. The Defendants' 15.

20 Are you there?

21 A. Yes.

22 Q. If you look in the upper right-hand corner, it's an Ocean 9  
23 invoice. Correct?

24 A. Yes.

25 Q. It's dated June 27th, 2017, correct?

1 A. Yes.

2 Q. They handed this to you on June 27 when you were there  
3 trying to renew your BTR license, didn't they?

4 A. Yes.

5 Q. And it has the \$570 late charge on it because your license  
6 had been expired for nine months, correct?

7 First line. The very first line. Late fee, \$570.  
8 Right?

9 A. Yes.

10 Q. And you had your checkbook with you, didn't you?

11 A. Always I have my checkbook with me.

12 Q. And you had plenty of money to pay the \$2,246 for this BTR  
13 license, right?

14 A. Yes.

15 Q. And you had an extra thousand dollars to pay the December  
16 invoice to resolve it, didn't you?

17 A. Yes.

18 Q. And you never paid the December 16 invoice?

19 A. They didn't accept my money.

20 Q. Did you try to pay?

21 A. I tried to pay. They told me that I need to resolve my  
22 violation.

23 Q. I am talking about the violation, sir. Did you go and try  
24 to pay the \$1,000 violation from December to resolve it?

25 A. I give it to my professional people. I give it to my

1 professional people to deal with that because I wasn't agree  
2 about this violation.

3 This violation, this violation that they give me on  
4 December, it was selling before 10:00 a.m., 8:33 or something  
5 in the morning, which we didn't even know that this ordinance,  
6 it's already in order.

7 Q. So on June 27th you voluntarily refused to pay the  
8 outstanding December 2016 violation which you never appealed?

9 MR. HUDSON: Objection, your Honor. Mischaracterizes  
10 his testimony.

11 THE COURT: Overruled.

12 BY MR. PAPPAS:

13 Q. You chose not to pay it at that time even though the clerk  
14 said to you if you just paid the thousand dollars and resolved  
15 the violation, we will give you your BTR for \$2,246.46, just  
16 like it says on Defendants' Exhibit 15, right?

17 A. I don't remember exactly what was the situation with the  
18 violation, but they told me that I need to resolve the  
19 violation and either way in order to pay the BTR.

20 Q. And you knew when you --

21 A. I went to my professional people to see what we doing, and  
22 we agreed that we need to appeal a violation of thousand  
23 dollar, that it's not correct to give, it's not right to give  
24 it to me if they create a new ordinance and it doesn't let us  
25 know that we have a new ordinance and they just come and give

1 you a violation and you come and you just pay thousand dollar  
2 like, like we make the thousand dollars in one second and just,  
3 you know, for to pay the BTR.

4 I think the mind on the same moment was the violation  
5 wasn't right and the other violation wasn't right and they  
6 attacking me and they trap us and they tried to get us out of  
7 business by giving us violation on violation on violation  
8 without us to know anything, what's going on. They create a  
9 new ordinance and changing the ordinance and nobody recognize  
10 what is real and what is not and what to do right and what to  
11 do wrong, and every move I had to go to professional people to  
12 see if I am doing the right thing or not. This exactly what's  
13 happening.

14 Q. And so on June 27, 2017 it was already six months after the  
15 December 2016 citation had been issued to you, correct? Right?

16 A. Probably.

17 Q. You knew you couldn't file a written appeal like it says  
18 right on the citation. You knew you waived your right to  
19 appeal it, correct?

20 A. We appeal. I didn't waive the right to appeal. Maybe I  
21 didn't appeal in the first 20 days because I didn't exactly  
22 know the situation, but we didn't waive the right to appeal  
23 because we appeal it after.

24 Q. Did you ever file a written notice of appeal for the  
25 June 25, 2017 violations?



1 A. Excuse me again?

2 Q. I will rephrase it.

3 The June 25th violations were on the exact same ticket  
4 form that the December violation was on, correct?

5 A. I am sorry. I am not --

6 Q. The tickets from June.

7 A. June 25.

8 Q. They were exactly the same form as the December tickets,  
9 right?

10 A. Yes.

11 Q. You knew you had time to appeal them in writing just like  
12 it says on the ticket, correct?

13 A. Yes. I brought it to the professional people.

14 Q. You never appealed in writing with the special master's  
15 office just like it says on the ticket, correct?

16 A. Yes, correct.

17 You are talking about the December?

18 Q. And the June.

19 You never filed a written appeal?

20 A. We had filed an appeal and they didn't accept our appeal.

21 Q. Because it was too late?

22 A. Not because it was too late. Because they said -- not  
23 because it was too late. Because they said that we send the  
24 appeal to a wrong office in the Miami Beach. We send it to,  
25 maybe to Miami Beach instead of to Miami City of Miami Beach,

1 maybe to the cashier instead of to -- I don't know exactly the  
2 situation, but not the reason because of the 20 days.

3 Q. When you say "we," you are referring to some professional  
4 that you hired? Not you personally, correct?

5 A. Yes.

6 Q. So the professional that you hired sent the notice of  
7 appeal to the wrong office; is that what you are saying?

8 A. They sent the appeal and I don't know what is the reason it  
9 didn't exactly accept it, but what I understand it was a wrong  
10 address.

11 Q. Did you ever sign a written notice of appeal of the  
12 June 25, 2017 violations within 20 days? Did you ever do that?

13 A. If I sign -- tell me again the question.

14 Q. You never --

15 A. I don't want to a make mistakes.

16 Q. You never filed a written appeal according to the City of  
17 Miami Beach's procedures for the June 25th, 2017 violations,  
18 correct?

19 A. We send appeal. We send appeal. I mean, Guy Shir send  
20 appeal with a \$100 check. We send appeal. But they didn't --  
21 for some reason it didn't work.

22 Q. When you say "we," you are talking about Ms. Malik?

23 A. Ms. Malik and Guy Shir, yeah.

24 Q. So your professionals that you hired, you claim took care  
25 of it for you, and they sent the appeal to the wrong location,

1 correct?

2 A. The professional, all the professional that I hire, any  
3 time that you come and try to do movement, they get some  
4 problem, you know, to deal with my cases.

5 Q. Did you ever --

6 A. I don't understand what is that. The professional try and  
7 try and try and all the time they have a problem and problem.  
8 You are not talking about one professional, another one,  
9 another one, another one. I did anything I can. Anything I  
10 can to try to resolve the problem with the city.

11 The City set me up. The city trap me. The city set  
12 me up not to get the license. That's what the city did. They  
13 set me up not to get the license in order to take for me my  
14 liquor store and destroy my business. That's exactly what's  
15 happened.

16 Q. You said it just now. You did everything in your power,  
17 right?

18 A. Everything in my power.

19 Q. When you were sitting with across from the clerk on  
20 June 27th at the finance department did you say, look, I have  
21 got my checkbook, how much do I owe you to get my BTR? Did you  
22 ask that?

23 A. But you are talking about the violation from December and  
24 then violation from June 25 and then another violation that  
25 come and come and come. So when does it stop? When are you

1 going to stop with it? When are you going to let me work and  
2 not attack me with all the violations? When you going to do  
3 it?

4 Q. Sir, answer my question.

5 A. Why should I answer you?

6 Q. Answer my question, sir. When you were sitting in front of  
7 that clerk on June 27th, did you say I have my checkbook right  
8 here, how much do I owe you to get the BTR? You didn't do  
9 that, did you, sir?

10 A. I answer you many time already.

11 Q. You didn't do it?

12 A. I don't have problem to pay any money. If any money, I  
13 don't have problem to pay.

14 Q. You refused to pay the December 16, 2016 invoice, the  
15 citation, you refused to pay it on June 27?

16 A. I appeal it because it was the wrong violation and I wasn't  
17 agreeing with all these violations, that we getting attacked  
18 from the city for no reasons. And changing ordinance from time  
19 to time. You know, how many time you change the ordinance in  
20 the city in the last year? Maybe four or five times. If you  
21 ask any liquor store or any convenience store what time is the  
22 hours right now, right now today, even the code enforcement  
23 doesn't know when to open and when to close. Then you come  
24 with the code enforcement and give violation, then you attack  
25 me and what? Just pay the thousand dollars, just pay another

1 thousand dollars, and then it's \$5,000 and then \$10,000.

2 Q. The answer to my question is --

3 THE COURT: Let's move on to another area.

4 BY MR. PAPPAS:

5 Q. Sir, you were not present with Mr. Rosen --

6 A. Shame on you.

7 Q. You were in the presence -- excuse me? Excuse me, sir?

8 A. Sorry.

9 Q. What did you say?

10 THE COURT: He said shame on you. Let's go. Move  
11 along.

12 BY MR. PAPPAS:

13 Q. You were not present with Mr. Rosen on August 28 when you  
14 allegedly met with the special master, correct? You were not  
15 there?

16 A. No.

17 Q. You have no idea what he did with the check, do you?

18 A. Who? Mr. Rosen?

19 Q. Yes.

20 A. He told us that he gave the check.

21 Q. You weren't there though, right?

22 A. I wasn't there.

23 Q. Were you in Miami in September?

24 A. Yes.

25 Q. Right. Do you remember what happened on the weekend of

1 September 9th and 10th?

2 A. No.

3 Q. Do you remember Hurricane Irma?

4 A. I remember Hurricane Irma.

5 Q. You remember the city shut down on a Thursday? The city  
6 shut down I think even on Wednesday.

7 A. So what's happened before. Every Thursday you have the  
8 special master. What happened before, the week before? You  
9 move the computer from office to another office and then shut  
10 down again.

11 Q. Right, sir. You know that the city was shut down on  
12 September 7th, correct? Correct? That was the --

13 A. I didn't know exactly when the city shut down, when the  
14 city opened.

15 Q. And you knew that the city remained shut down on  
16 September 14th after Hurricane Irma, correct? Correct?

17 A. I am sorry. I need to drink some water. Can I?

18 Q. Yes, of course. Tell me when you are ready.

19 Are you all set?

20 A. Yes.

21 Q. You did not go down to the City of Miami Beach on  
22 September 28th, Thursday, September 28th, 2017, correct?

23 A. What you mean?

24 Q. You didn't go in person on Thursday, September 28?

25 A. I went on 28, 29.

1 Q. You did?

2 A. I went. I don't remember the date exactly, you know, but I  
3 went after they told me to sign the order and go pay your BTR.

4 Q. Right. And --

5 A. Harold told me go pay your BTR.

6 Q. Did you renew your Ocean 11 BTR on September 28?

7 A. They didn't allow me.

8 Q. Why not?

9 A. Because they told me that I have a violation.

10 Q. Did you have a violation on Ocean 11?

11 A. Some signed violation.

12 Q. Did you pay for the violation?

13 A. No. They dismiss the violation.

14 Q. When?

15 A. They dismiss it for some -- they dismiss the violation and  
16 then I went Monday and I paid.

17 Q. Tuesday?

18 A. Actually, actually, I don't remember how it was working.

19 Q. So you had an open violation on September 28th on Ocean 11  
20 and they wouldn't let you renew, correct?

21 A. Yeah, I think so.

22 Q. Right. Then when you had to pay -- then you renewed Ocean  
23 11 on October 3?

24 A. On October 3.

25 Q. You went down in person with your checkbook. Now the

1 violation was resolved and you could pay your bill, right, just  
2 like they told you for Ocean 9 back on June 27? Right?

3 A. The code enforcement dismiss the violation.

4 Q. It was resolved?

5 A. They dismiss the violation and then I went and pay, yeah.

6 And exactly like I tried to do on September 28th when the  
7 violation, the three violation was resolved with the special  
8 master, I went to pay and they didn't accept it.

9 Q. Right.

10 A. They didn't accept both of them.

11 Q. You went to the cashier, right?

12 A. On October 3, yeah.

13 Q. No. On September 28 you went to the cashier at the finance  
14 department?

15 A. No. No.

16 Q. Did you go personally?

17 A. I went to finance, not to the cashier. It's two different  
18 windows.

19 Q. Right, and they opened up your screen and still saw open  
20 violations?

21 A. Yes.

22 Q. Did you have the agreed order with you? Did you have it  
23 with you?

24 A. No, I didn't have it.

25 Q. Right. Was --



1 A. I didn't have that, the agreed order. I had it -- I had  
2 agreed order. Rochelle -- I didn't have the agreed order with  
3 me.

4 Q. You didn't?

5 A. I didn't have the agreed order with me. I didn't.

6 Q. You didn't have a copy of it?

7 A. I had a copy.

8 Q. You didn't have it with you?

9 A. I didn't have it with me.

10 Q. The clerk at the city finance department said I have no  
11 evidence that you have an agreed order, correct?

12 A. So what did -- I don't understand. So I don't think that  
13 you going to trick me another two days or something happen. I  
14 just thought that I resolved the problem. I come to pay. They  
15 tell me you can't pay because you still have the violations.  
16 It doesn't -- to something like this, you think it's a matter  
17 of one day, you know. So I went Friday -- I think Friday -- it  
18 was Thursday or Friday, and then I went again on Tuesday.

19 Q. Sir --

20 A. I went every day. Almost every day I tried to pay.

21 Q. Your license was now over a year old at that point in time,  
22 expired, correct?

23 A. After.

24 Q. Right. You had admitted the violations of the hours  
25 problems at your stores, correct? You admitted that those

1 violations were valid, correct?

2 A. Yeah.

3 Q. And you never ever wrote a check for --

4 A. They never accept a check for me.

5 Q. My question is --

6 A. They never accept without result of violation. They never  
7 accept the check. After September 28, when I was in the  
8 finance, they never accept a check from Ocean 9 Liquor.

9 Q. On June 27 --

10 A. Back to June 27?

11 Q. From June 27 --

12 A. Okay.

13 Q. -- until October 6th, you never wrote a check for the  
14 \$2,240 that they showed was owing for your BTR just like on the  
15 invoice that they gave you on June 27 in person with the late  
16 charge? You never, ever wrote that check and handed it to  
17 them, did you?

18 A. They never let me hand it.

19 Q. My question is different. You never wrote the check like  
20 you wrote the thousand dollar check, you never wrote the  
21 2,200 --

22 A. Everybody leave me. The city, the city, the officer in the  
23 city, everybody there, Rochelle Malik, Rosen, everybody leave  
24 me that I need to resolve the violation in order to pay my BTR.  
25 I never, technically I never did it. I never did it. I never

1 did it.

2 Q. Thank you.

3 A. I never did it because -- I never did it because nobody  
4 allowed me to pay. Nobody allowed me to pay.

5 Q. I think you have answered my question.

6 A. This is the way, you know, the city set you up. So it's --

7 Q. You never appealed the October 6th, 2017 violation, did  
8 you?

9 A. They told me -- no, I never appealed this September 6.

10 Q. October 6.

11 A. October 6 violation.

12 Q. The violation when they closed you down for not having a  
13 BTR, you never appealed that according to the city's procedures  
14 of filing a written notice of appeal; you never did that, did  
15 you?

16 A. I never appealed it.

17 Q. Correct?

18 A. I never appeal it.

19 Q. Right.

20 A. I never appeal. I went to a lawsuit.

21 Q. You have never --

22 A. I went to a lawsuit.

23 Q. You have never --

24 A. I saw that I can't do anything, you know, without lawsuit,  
25 without sitting with the city authority and talk to them and

1 try to resolve the problem.

2 Q. You have never filled out an application for a new BTR,  
3 correct?

4 THE WITNESS: What shall I --

5 THE COURT: Just answer the question yes or no.

6 A. No.

7 BY MR. PAPPAS:

8 Q. You have never appealed from your claim that the city will  
9 not issue you a new BTR, correct?

10 A. I never appeal if you mean on the October 6 violation, I  
11 never appeal. I went to a lawsuit.

12 Q. And you have never gone to the city and said you have  
13 wrongfully refused my BTR, I want to appeal, correct?

14 A. I had people, professional people, trying to deal with the  
15 city every day, every day. Every day talking with the city  
16 manager, talking with the city attorney, talking with anybody  
17 possible.

18 Q. You have never had a hearing with the city manager  
19 regarding your BTR license, correct?

20 A. What? Excuse me?

21 Q. I will rephrase it.

22 A. Okay.

23 Q. You have never had a meeting with the city manager,  
24 regarding your BTR license for Ocean 9, 865 Collins Avenue,  
25 correct?

1 A. I had a meeting with the city manager.

2 Q. You had a meeting with the city manager. Have you ever had  
3 a hearing with the city manager?

4 A. I had a meeting with the city manager. We did  
5 professional. We did Rochelle Malik. We tried to resolve the  
6 problem to pay the BTR and they didn't accept it.

7 Q. And did you appeal the city manager's refusal to accept  
8 your BTR? Did you appeal?

9 A. I didn't appeal. On the violation you are talking about or  
10 not accept my payment for the BTR?

11 Q. Yes.

12 A. I don't understand what you are asking me.

13 Q. We are talking about your claim that the city refused --

14 A. What answer I can do? I had three lawyers working on it.

15 Q. Sir --

16 A. With a city manager, with a city attorney, with all the  
17 people. You asked me if I didn't appeal.

18 Q. Yes.

19 A. It was obvious that I can't get anything. I can't get  
20 anything. It over here that the city attorney order not to  
21 issue me any license. It's over here. How can I -- what  
22 appeal what? I went to lawsuit. What appeal? You ask me for  
23 appeal.

24 Q. Did you ever file a lawsuit in the state court system  
25 claiming --

1 THE COURT: You don't need to ask these questions.  
2 It's uncontroverted that he never filed any lawsuit.

3 MR. PAPPAS: We don't know that.

4 THE COURT: Stipulate that -- excuse me, sir? Quiet.

5 THE WITNESS: I am sorry, your Honor.

6 THE COURT: Let me tell you something. You are in a  
7 court of law. You answer a question when you are asked. This  
8 isn't for you to stand on a podium and make announcements.

9 Do you understand?

10 THE WITNESS: Yes. I am sorry.

11 THE COURT: Do you stipulate there has not been a  
12 state lawsuit filed in this matter?

13 MR. PAPPAS: Yes.

14 THE COURT: How much more do you have?

15 MR. PAPPAS: None.

16 THE COURT: Redirect.

17 MR. HUDSON: Nothing, your Honor.

18 THE COURT: You can step down, sir.

19 (Witness excused)

20 THE COURT: We are going to take a lunch break.

21 Is the plaintiff calling anybody else?

22 MR. HUDSON: No. We are done.

23 THE COURT: Defendants, who are you calling?

24 MR. ARANA: Manuel Marquez.

25 THE COURT: What about the second person?

1 MR. ARANA: Assistant director of finance, and then  
2 probably Hernan Cardeno.

3 THE COURT: How long are they going to take?

4 MR. ARANA: I don't think they are going to take long.  
5 A half hour each.

6 THE COURT: For your direct?

7 MR. ARANA: For direct maximum.

8 THE COURT: How long are you going to take?

9 MR. HUDSON: Cross about the same, probably.

10 THE COURT: We will start up again at 2.

11 So far the estimate was this witness was going to be  
12 an hour. He took two hours. Let's get a little more focused  
13 on the next two witnesses. In fact, let's come back at a  
14 quarter to 2. That should give you enough time to grab a  
15 sandwich if you want to.

16 (Recess taken in proceedings.)

17 THE COURT: Does the plaintiff have any further  
18 evidence or witnesses?

19 MR. HUDSON: No, your Honor.

20 THE COURT: Defendant call their first witness,  
21 please.

22 MANUEL MARQUEZ,  
23 having been first duly sworn on oath, was examined and  
24 testified as follows:

25 THE WITNESS: Manuel Marquez. Last name

1 M-A-R-Q-U-E-Z.

2 DIRECT EXAMINATION

3 BY MR. ARANA:

4 Q. Good afternoon, Mr. Marquez.

5 A. Good afternoon.

6 Q. Do you work for the City of Miami Beach?

7 A. I do.

8 Q. What is your position with the city?

9 A. I am assistant director of the finance department.

10 Q. How long have you served in that capacity?

11 A. Since 2006.

12 Q. I think you submitted an affidavit in this case, which  
13 suggests it was from 2011. Is that a typo?

14 A. That is a scrivener error.

15 Q. What is your general duties and responsibilities as  
16 assistant director of finance?

17 A. I manage the day-to-day functions of our city's customer  
18 service center, which handles business tax receipts, utility  
19 billing, lien statements, and other revenue-generating  
20 functions of the city.

21 Q. Thank you.

22 And what is a business tax receipt?

23 A. A business tax receipt is what lay people would call an  
24 occupational license. It's a tax. For any business engaged in  
25 a for profit business, the City of Miami Beach is required to



1 obtain a business tax receipt.

2 Q. Any business in the City of Miami Beach has to have a  
3 business tax receipt to operate; is that correct?

4 A. That is correct.

5 Q. Can you briefly describe the process that a business  
6 applicant must follow to apply for a new BTR?

7 A. Business tax receipts are governed by Florida statutes 205  
8 and our city code section 102. A business that wants to obtain  
9 a business tax receipt in the City of Miami Beach has to apply.  
10 They can apply online or in person. They are required to fill  
11 out an application. That application, you also have to submit  
12 a lease or a warranty deed that tells us where you are going to  
13 be operating. If the business that you are operating requires  
14 a state license, you would also need to submit a state license  
15 and you would also need to submit articles of incorporation.

16 Q. Are you familiar with Beach Blitz's BTR license history?

17 A. Yes.

18 Q. I am going to direct you to a few exhibits which are in the  
19 black binder in front of you. If you could please look at  
20 Exhibit 4, which is in evidence.

21 A. I have Exhibit 4.

22 Q. What is Exhibit 4?

23 A. Exhibit 4 is a business tax receipt for Beach Blitz company  
24 located at 865 Collins Avenue for the fiscal year beginning  
25 October 1, 2011 through September 30, 2012. It's a BTR,

1 business tax receipt, for liquor sales.

2 Q. And what was the city's procedure for processing this BTR  
3 application?

4 A. This BTR application would have been received and it would  
5 have been routed to all of our regulatory departments. For  
6 this type of business the finance department does the  
7 application intake and then we route it electronically to the  
8 building department, the fire department, planning department,  
9 and the code compliance department.

10 Q. And those departments weigh in on whether to approve the  
11 BTR?

12 A. They do.

13 Q. Did Beach Blitz renew its BTR license for fiscal years  
14 2012/13, 2013/14, 2014/2015 and 2015/2016?

15 A. They did.

16 Q. Okay. What was Beach Blitz required to do in order to  
17 renew its BTR for those years?

18 A. To simply pay the BTR renewal, which is mailed out in July  
19 of every year. We mail out the renewal for the upcoming fiscal  
20 year.

21 Q. If the company wanted to add a new use, what would happen  
22 then?

23 A. A company wanting to add a new use would fill out an  
24 application similar to the first application that was filled  
25 out for this entity, Beach Blitz. They would fill out an

1 application describing the type of business activity you wanted  
2 to partake in and then we would take that application and route  
3 it to all of the regulatory departments.

4 Q. So could you take a look at Exhibit 6. What is Exhibit 6?

5 A. Exhibit 6 is a BTR, business tax receipt, for Beach Blitz  
6 at 865 Collins Avenue. It is for the time period October 1,  
7 2015 through September 30, 2016. It's for all the categories  
8 that are listed there in exhibit. They have an ATM machine  
9 located at the facility, they are engaged in food sales, liquor  
10 sales, merchant sales, and they also have a category for  
11 entertainment establishment without dancing.

12 Q. So if we look at pages 2 and 3 of Exhibit 6, is this an  
13 application for BTR?

14 A. Yes, it is.

15 Q. And this is Beach Blitz's application for a BTR for the  
16 2015 and '16 fiscal year, correct?

17 A. Correct. This is an application where they added these  
18 additional categories to their existing BTR.

19 Q. So that was my question. Why did Beach Blitz have to  
20 submit a new application for this year?

21 A. Any time you add a category to your BTR, you are required  
22 to fill out an application.

23 Q. So Beach Blitz submitted a new application adding the  
24 categories and then this application, who routed this  
25 application to the various departments. Is that right?

1 A. Correct. We would route it to building, planning, fire and  
2 code compliance.

3 Q. And the BTR for 2015, fiscal year 2015 to '16 was issued,  
4 correct?

5 A. It was, yes.

6 Q. And when did this BTR expire?

7 A. All BTRs expires September 30th of the year that they were  
8 issued. This is by state statute chapter 205.

9 The period for BTR is from October 1th through  
10 September 30th of the fiscal year.

11 Q. So did this BTR expire on September 30, 2016?

12 A. It did.

13 Q. And did Beach Blitz submit payment to renew its BTR prior  
14 to that date?

15 A. It did. That's why it had this BTR.

16 Q. I am talking about prior to the expiration of this BTR.

17 A. Yes.

18 Q. Did Beach Blitz pay for a license, a BTR license for  
19 2016/17?

20 A. They did not.

21 Q. And that's because the license -- because they did not pay  
22 for that renewal, correct?

23 A. Correct.

24 Q. So just to clarify, Exhibit 6, which is the 2015/16 BTR,  
25 expired on September 30, 2016, correct?

1 A. Correct.

2 Q. Without Beach Blitz having made a payment for the following  
3 year, correct?

4 A. Correct.

5 Q. Now if you could take a look at Exhibit 7, please. What is  
6 Exhibit 7?

7 A. Exhibit 7 is a printout from our system depicting the date  
8 that the renewal for the fiscal year 2016/17, when it was  
9 created. This renewal notice was created on July 1, 2016.

10 Q. And this was the renewal notice for Beach Blitz, correct?

11 A. Correct, for Beach Blitz.

12 Q. For the 865 Collins Avenue location, correct?

13 A. Yes, sir.

14 Q. And does the city send its BTR license holder an invoice to  
15 renew their BTRs every year?

16 A. We do.

17 Q. And in July of the year in which the license expires, is  
18 that the time when --

19 A. That's the time.

20 Q. -- when they are sent?

21 A. Yes. We send it out every July via U.S. Postal Service, we  
22 send out renewal notices.

23 Q. But Beach Blitz did not pay its renewal invoice prior to  
24 the expiration of the BTR on September 30, 2016, correct?

25 A. They did not. They did not pay for this location.

1 Q. Let's talk about, then, the 2016-17 fiscal year. Would  
2 that be from October 1 until September -- I am sorry.  
3 October 1 of 2016 to September 30 of 2017?

4 A. That is correct.

5 Q. Is there any process or procedure in your department which  
6 would have prevented Beach Blitz from paying this invoice  
7 during that fiscal year?

8 A. None whatsoever. They could have paid the invoice at City  
9 Hall, 1700 Vintage Center Drive, at our customer service  
10 center, 1755 Meridian Avenue, our lockbox. Our lockbox is on  
11 our renewal notice. Our renewal notice has a link to our  
12 website and you can click on the link and pay online.

13 Additionally, we have a satellite office in North  
14 Beach Miami Beach where customers can pay it at our satellite  
15 office.

16 Q. Can you explain to the court -- so just to be clear, the  
17 city will always accept payment for a BTR, correct?

18 A. Correct. That's why we send out the renewal notices, so we  
19 can get paid.

20 Q. Can you explain to the court the city's procedure for  
21 actually issuing the BTR in the event that there are  
22 outstanding fines or debts owing to the city?

23 A. Sure. In our city code on chapter 102, the city permits us  
24 from withholding someone's BTR if it has been paid if a  
25 business entity owes the city outstanding monies. So we mail

1 out a renewal notices in July. If a customer does not pay --  
2 their period to pay ends September 30th of that fiscal year.  
3 That BTR is good for one year, from October 1 through  
4 September 30th.

5 THE COURT: If someone pays but they have a violation  
6 that's outstanding, what happens then?

7 THE WITNESS: If someone comes to our office and pays  
8 for a BTR and they have an outstanding violation, we would  
9 notify them, thank you for your payment for the BTR but you  
10 have these outstanding violations or you have these outstanding  
11 moneys that are owed to the city. You need to remedy these  
12 first before we can issue your BTR.

13 Now, if the outstanding violation is a code violation  
14 and the customer wishes to challenge the violation, they say  
15 this isn't right, I am going to challenge it at the special  
16 master level, once they schedule something before a special  
17 master and they show us evidence that it's going before the  
18 special master, we will release the BTR. That's our standard  
19 practice, because they haven't had their day in court, they  
20 haven't been adjudicated guilty.

21 BY MR. ARANA:

22 Q. So if a notice of violation is issued and the time for  
23 appeal runs, then that violation, that debt becomes due to the  
24 city, correct?

25 A. Correct. Yes, sir.

1 Q. You would expect a business owner to pay that before the  
2 city, before the city will issue the BTR, correct?

3 A. That is correct. Yes.

4 Q. But the city will accept payment for the BTR, correct?

5 A. Yes, we do. That's part of our practice every single day.

6 Q. And then when the violations are paid, it will go ahead and  
7 issue the BTR; is that right?

8 A. Yes.

9 Q. As far as you know, did Beach Blitz during the 2016/17  
10 fiscal year ever submit payment to the city for its BTR?

11 A. They did not.

12 Q. And if Beach Blitz had ever submitted payment to the city  
13 for its BTR for the 2016/17 fiscal year, would the city have  
14 accepted that check?

15 A. We would have accepted the payment.

16 Q. Let me ask you to take a look at Exhibit 15. What is  
17 Exhibit 15?

18 A. Exhibit 15 is a reprint of an invoice for fiscal year  
19 2016/17. The customer or customer's representative came to our  
20 office on June 27 -- that's the invoice date that's on this  
21 document -- and asked for a printout of what was owed for the  
22 BTR for Beach Blitz at 865 Collins Avenue. One of my staff  
23 members printed this and hand delivered it to the person  
24 representing Beach Blitz.

25 Q. And if on June 27th Beach Blitz or its representatives had



1 handed the clerk a check for \$2,246.46, would the clerk have  
2 accepted that payment?

3 A. The clerk would have accepted that payment. And if there  
4 was no outstanding monies owed, we would have issued a BTR  
5 there and then.

6 Q. Now, are you aware that Beach Blitz at this time on  
7 June 27th had an outstanding violation from December 21 of  
8 2016?

9 A. I am now aware that they had an outstanding violation.

10 Q. And you are aware that they were cited on December 21, 2016  
11 and never appealed that violation? Correct?

12 A. Correct.

13 Q. So on June 27 when they came in, in addition to owing the  
14 money for the BTR, Beach Blitz also owed \$1,000 for the  
15 citation, correct?

16 A. Correct. If they would have paid the BTR, the \$2,246.46  
17 and the thousand dollars for the violation, we would have  
18 issued their BTR on the spot at that moment.

19 Q. Now, are you aware that on June 25th, two days before this  
20 invoice was issued, Beach Blitz received two notices of  
21 violation?

22 A. I am aware.

23 Q. Would those notices of violation have been due on  
24 June 27th?

25 A. They would not have been due on June 27th.

1 Q. Okay. Is that because they are not due until the time for  
2 appealing them runs?

3 A. Correct.

4 Q. So those invoices would not have impacted Beach Blitz's  
5 ability to pay for and obtain its BTR at that moment, right?

6 A. No.

7 Q. All it had to do was pay \$2,246 plus a six-month-old \$1,000  
8 fine?

9 A. Correct.

10 Q. If Beach Blitz had timely appealed those two June 25th  
11 violations to a special master, would Beach Blitz have been  
12 able to simply pay the BTR and obtain its license --

13 A. Yes.

14 Q. -- at that point?

15 A. Yes. If Beach Blitz timely appealed the two violations and  
16 paid for the BTR, we would not withhold the BTR. We would have  
17 issued a BTR as soon as we had confirmation of the payment for  
18 the BTR.

19 Q. Because if Beach Blitz had timely appealed that, those two  
20 citations, they wouldn't be due, correct?

21 A. They are not due until the special master makes a ruling on  
22 that case.

23 Q. Okay. Now, we just talked about the June 25th, 2017  
24 violation for operating without a BTR.

25 You are aware of that one, right?

1 A. Yes.

2 Q. Does the resolution of the appeal to the special master  
3 regarding the fine resolve the issue of payment for the BTR?

4 A. No. They are two independent items. The BTR is a tax for  
5 conducting business in Miami Beach that needs to be paid.

6 Q. So does the city expect business owners who are cited for  
7 operating without a BTR to come in and pay for the BTR?

8 A. Yes.

9 Q. Independent of whether they choose to appeal that citation?

10 A. Correct. The BTR amount due are still due to the city.

11 Q. Let me ask you to take a look at Exhibit 8. If you could  
12 explain to the court what is Exhibit 8.

13 A. Exhibit 8 is a screenshot from our database where we manage  
14 our BTRs. This shows the Beach Blitz businesses. They have a  
15 business at 1100 Collins Avenue and an additional business at  
16 865 Collins Avenue. It shows that they have an active BTR for  
17 Beach Blitz at 1100 Collins and a closed BTR at 865 Collins  
18 Avenue.

19 Q. What does it mean that the 865, the location of the license  
20 status is closed?

21 A. This means that in our database this business has been  
22 closed. Their time frame to renew and pay for the renewal has  
23 expired. In order for them to get a BTR for that location they  
24 would have to reapply. They missed the renewal period.

25 They had approximately nearly 400 days to pay for

1 their BTR renewal since the mailings were sent out in July, and  
2 they were due in July of 2016, and they had until  
3 September 30th of 2017 to pay for the renewal. So this  
4 business in our records has been closed. They didn't renew  
5 their license.

6 Q. In any one of those 400 days Beach Blitz could have come in  
7 and submitted their payment?

8 A. At any time in any of the payment methods I mentioned  
9 before.

10 Q. And the city would have accepted that payment, correct?

11 A. Yes.

12 Q. If there was an outstanding violation that they were not  
13 paying, then you would have held that BTR until they paid the  
14 fine?

15 A. Correct. We would have advised them of the outstanding  
16 violation and instructed them that this needs to be resolved  
17 before we can issue your paid BTR.

18 Q. Once an account is closed over a year after the license  
19 expires, correct, what does an applicant need to do, a business  
20 owner need to do to obtain a BTR?

21 A. It's simple. It's one of our earlier exhibits. You submit  
22 an application and the application is routed to all of our  
23 regulatory department, building, planning, fire and code, and  
24 they would review the application. The application intake  
25 would happen in my department, the finance department, and we

1 would route it electronically to all of our regulatory  
2 departments.

3 Q. And if you were to submit an application today for a new  
4 BTR, is that the process you would follow?

5 A. Yes.

6 Q. And if the result of that application were a denial, does  
7 the applicant have an opportunity to appeal that through the  
8 city's processes?

9 A. Yes. Chapter 102 of our city code has an appeal process  
10 for businesses that are denied BTR. The city manager or  
11 designee would process the appeal.

12 Q. And if an application for a new BTR were submitted by Beach  
13 Blitz, would you or your department make the decision about  
14 whether to grant it in the first place?

15 A. No. My department, just the paper we receive, the  
16 application. We are the intake department. We route it to the  
17 regulatory departments. Once the regulatory departments have  
18 reviewed, they give us the okay. Then we are the ones that  
19 collect the money and issue the BTR.

20 THE COURT: They give you the okay or the denial?

21 THE WITNESS: Correct, they give us the okay or the  
22 denial electronically in our system.

23 MR. ARANA: Mr. Marquez, I have no further questions.  
24 Thank you.

25 THE COURT: Any cross?

1 MR. HUDSON: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. HUDSON:

4 Q. Let me understand the process first and then we will get  
5 into some specifics. I kept hearing counsel say to you that  
6 they would have accepted the money had money been tendered; is  
7 that correct?

8 A. That is correct.

9 Q. But you wouldn't have -- you will help me with the words --  
10 but you wouldn't have issued or released the license if there  
11 were a special master proceeding pending or something pending,  
12 correct?

13 A. If there were outstanding monies owed to the city, we would  
14 withhold the BTR until the outstanding monies are either paid  
15 or, if it's a special master case, it's been appealed at the  
16 special master level. If it has been appealed at the special  
17 master level, we would release the BTR.

18 Q. So payment alone doesn't solve the BTR problem; it's a step  
19 in the right direction, correct?

20 A. Normally, typically payment alone solves the BTR problem.  
21 Most businesses don't have outstanding violations or monies  
22 owed to the city. So the typical practice is you receive a  
23 renewal notice, you pay for your renewal notice, and then we  
24 issue the BTR.

25 Q. In this case, on June 27th there was an outstanding

1 violation that had dated back to the prior year, 12/16. Are  
2 you familiar with that?

3 A. The \$1,000 violation?

4 Q. Correct.

5 A. Okay.

6 Q. There's been testimony by my client that he walked in and  
7 tried to get his BTR and he was told he couldn't because there  
8 were outstanding violations. Is that inconsistent with how the  
9 process works?

10 A. That would be an accurate statement. My staff would have  
11 told them you can pay for your BTR or we will not release your  
12 BTR until you pay this other outstanding monies owed to the  
13 city. But we will accept payment for the BTR.

14 Q. Let's assume nothing changed and the fiscal year clicked  
15 over. In other words, they had paid the BTR money on that  
16 June 27th day. For whatever reason that violation had not been  
17 resolved. The BTR would have expired or closed, as you call  
18 it, correct?

19 A. It would have expired September 30. They are good for one  
20 fiscal year.

21 Q. And he would have had to apply for a new BTR, correct?

22 A. If he had paid for his BTR and is handling something that's  
23 going before the special master, we wouldn't close the BTR at  
24 that point because it's an ongoing thing with the special  
25 master.

1 Q. So it's your testimony it would have been simply a renewal?

2 A. Our system doesn't renew BTRs unless a payment has been  
3 made. If no payment has been made for the BTR, our system  
4 won't automatically renew a BTR.

5 Q. I think you testified that a renewal is simply just paying  
6 the amount on the renewal notice or any late fee, correct?

7 A. A renewal is a courtesy notice the city sends to customers  
8 so they can pay their BTR.

9 Q. Once the payment is made if there are no violations,  
10 there's an automatic renewal, correct?

11 A. Correct.

12 Q. That didn't happen here, right?

13 A. That didn't happen here because the customer didn't pay  
14 their BTR during the fiscal year.

15 Q. Let's talk about that. I have seen your affidavit. I  
16 don't think we need to talk about your affidavit because you  
17 testified to this today. You testified as to a process. I  
18 understand process. Everybody tries to have process. But  
19 process doesn't always work.

20 In this case we have alleged there is an additional  
21 motive of the commission, the mayor, the city manager and  
22 others to put liquor stores out of business. So we have  
23 alleged that the city essentially violated its process by not  
24 doing what it would normally do.

25 So in this case when you say in your affidavit and you



1 say under oath today, and I don't mean to put words in your  
2 mouth so you tell me if I stated this incorrectly.

3 "I'm sure that they never tried to pay the BTR because  
4 we would have accepted the money."

5 Did you interview every one of your -- I don't know  
6 what they are called, the people at the desk. Did you  
7 interview every one of them and ask them if they had any  
8 recollection about this?

9 A. I did not interview every one of my staff members.

10 Q. So when you say I know he didn't pay, what you are really  
11 saying is I can tell you what the process is and I could tell  
12 you what they should have said, but I wasn't there and I can't  
13 tell you what really happened?

14 A. Well, I was there during June 27. If there was a problem,  
15 if a customer or any business for that matter came to our  
16 office and attempted to pay and couldn't pay, they could have  
17 easily called for one of my many supervisors or called for me  
18 and I would have immediately gone out and solved whatever the  
19 issue is or given some guidance. That did not happen in this  
20 case.

21 Q. So since that didn't happen, I don't know, you don't know,  
22 the judge doesn't know actually happened on June 27 at that  
23 counter?

24 A. What I know is that the customer came in and a reprint of  
25 his BTR was provided. It is our practice to tell customers,

1 this is your BTR, it's due, it's late. The penalty charges  
2 were already calculated on that June 27th invoice. And we  
3 would have instructed the customer as part of our standard  
4 operations that here is your invoice, you could pay for it at  
5 our window.

6 Q. Now in the context of what actually happened in this case,  
7 let's play it out. There was a \$1,000 fine outstanding on a  
8 matter from December the prior year, right? So if he had paid  
9 that day, you would have accepted the money, but his license  
10 would have been -- I am not even sure what the right word is --  
11 in suspense?

12 A. If he would have paid the BTR that day and he would have  
13 paid the \$1,000 violation and there's nothing else in our  
14 system that he owes us any late monies for any other invoices,  
15 he would have walked out with a BTR in his hands.

16 Q. But just paying the BTR money that day wouldn't have solved  
17 the problem?

18 A. No, not just paying the BTR money. There was a thousand  
19 dollar outstanding matter.

20 THE COURT: I thought you had to check with other  
21 departments before you issued the BTR.

22 THE WITNESS: No. I check with our departments in a  
23 brand new application.

24 THE COURT: Only on new applications.

25 THE WITNESS: This is a renewal notice. So for a

1 renewal notice, it's simply make a payment. If you don't owe  
2 the city any money, we release the BTR.

3 BY MR. HUDSON:

4 Q. Turn to Exhibit 7 in the white binder.

5 THE COURT: Tell me the number again.

6 MR. HUDSON: Seven, your Honor. It's the agreed  
7 special master order.

8 BY MR. HUDSON:

9 Q. Have you seen this document before?

10 A. I don't recall.

11 Q. On June 27 you testified that there was one outstanding  
12 violation that was old. Were you aware that there were two  
13 brand new violations that were issued on June 25th?

14 A. I am aware now. I wasn't aware in June 27th because the  
15 customer did not speak with me. But I am aware now and since  
16 sometime in October.

17 Q. Take a quick look at Exhibit 5, which are those two  
18 June 25th violations. I want you to pay attention to the  
19 violation numbers because then I want you to go to the special  
20 master agreed order, which is Exhibit 7, again.

21 A. I see these violations were issued on June 25th. So I  
22 imagine this is what triggered the customer, the business to  
23 come to our office on June 27th.

24 Q. And that's what you want to happen, right?

25 A. Yes.

1 Q. You didn't pay your bill, come pay it, correct?

2 A. Yes.

3 Q. Now, by the way, you said notices. Sometimes you would  
4 send courtesy notices out. In addition to the original invoice  
5 you would send courtesy notices out. Did any courtesy notices  
6 go to my client?

7 A. Yes. The renewal notice is a courtesy notice. We call the  
8 renewal notice a courtesy notice because there's no requirement  
9 by state statute or city code that a renewal notice be sent  
10 out.

11 Q. Did my client Beach Blitz Ocean 9, the 865 address, did it  
12 receive any other notices relative to the BTR violation?

13 A. It received its notice in July. I am not aware of Beach  
14 Blitz receiving any other notices.

15 Q. The July 16 notice, that would have been for '16, '17?

16 A. Correct. This is very similar to like your driver's  
17 license. Your driver's license expires on a certain date.  
18 Whether you get a renewal notice or not, the expiration date is  
19 the expiration date. Similar to tax day, April 15. April 15  
20 is the day your IRS taxes are due. Whether you receive a  
21 notice or not, that's the due date.

22 It's very similar in our business tax. The business  
23 tax BTR is good for one fiscal year, October 1 through  
24 September 30th, and most businesses are aware of this because  
25 they renew every year. So it's a common thing.

1 Q. Look at the agreed order, which is Exhibit 7.

2 Wouldn't you agree that all three of the violations  
3 that were outstanding were dealt with by the special master by  
4 the order dated September 28?

5 A. I have to read the order.

6 Q. Sure. I am sorry. Take your time.

7 MR. ARANA: I'm going to object for lack of personal  
8 knowledge. The witness is not familiar with this exhibit.

9 THE COURT: Objection is overruled.

10 You can answer.

11 A. This is something that would be done either at a special  
12 master or a city attorney's office. It's not a form that I am  
13 familiar with. I am not an attorney.

14 Q. I don't mean to cut you off, but I want you to tell me if  
15 you can tell if the three outstanding violations for 865, which  
16 is the Beach Blitz Ocean 9 business, are the three that were  
17 outstanding on June 27th?

18 A. I am reading the citation number, cc 21601704 and cc  
19 2170312 and cc 2170313 are hereby affirmed. I have no idea  
20 what that means, but that's what I am reading.

21 Q. But by the citation numbers can you tell, as you looked at  
22 something earlier either on your direct or speaking to me, that  
23 there were three citations? In fact, we showed you Exhibit 5.

24 A. Correct. There was a citation for \$1,000.

25 Q. Look at the citation numbers in Exhibit 5. Those two are

1 the same as in the agreed order.

2 MR. ARANA: I will object. Again, lack of personal  
3 knowledge.

4 THE COURT: Overruled. He is testifying to what his  
5 company does or his office does. I can just take judicial  
6 notice of 02.

7 Is there any objection that these are the three  
8 citations we have been talking about?

9 MR. ARANA: No, your Honor.

10 THE COURT: The other two are from June 2017.

11 BY MR. HUDSON:

12 Q. When your office gets an order resolving all outstanding  
13 violations, based on what I believe you have said today, now a  
14 person can tender the money for the BTR, get the BTR  
15 immediately, correct?

16 A. If I receive something from our city manager's office or  
17 our city attorney's office saying these violations have been  
18 settled, whatever terminology is used, if I receive something  
19 from the city attorney's office or city manager's office and  
20 the BTR payment has been made, the BTR would have been  
21 released.

22 Is that your question?

23 Q. So this order wouldn't have been enough for you. You  
24 needed direction either from the city attorney or from the city  
25 manager, correct?

1 A. If I didn't understand this order presented to me and I  
2 don't understand what I was reading, I would reach out to  
3 whoever wrote the order to find out what this deals with.

4 Q. Can you tell from that order who wrote it?

5 A. What was the number of the exhibit again? I am sorry.

6 Q. Seven.

7 A. I see a special master. I can't make out the signature on  
8 this special master.

9 Q. How often do you deal with special master orders and in the  
10 context of BTRs and violations?

11 A. It's not a regular daily matter. It's not part of my daily  
12 job. My job, I am the tax man. I send out bills and collect  
13 money for the city.

14 Q. I don't know if I'd admit that in open court.

15 THE COURT: They made a song about that.

16 BY MR. HUDSON:

17 Q. Is it fair to say the people that work in your department  
18 that are subordinate to you that are at the counter are  
19 probably even less familiar with the special master process and  
20 special master agreed orders?

21 A. I wouldn't say that. I have some people that are detached  
22 and worked with the special master in prosecuting certain  
23 cases.

24 Q. So the simple existence of this September 8th order may not  
25 have been sufficient to allow the city to release the BTR?

1 A. If the customer came on this date that you just mentioned  
2 with this order and paid for their BTR, we would have processed  
3 the payment for the BTR and we would have investigated what is  
4 this order all about, does this settle the three outstanding  
5 violations. We would have done that if this came to our desk.

6 Q. That's what you would have done, you as the supervisor?

7 A. Correct. That's what our staff would do. They are trained  
8 to solve issues, help customers.

9 We want the customer to get the BTR. We don't want  
10 the customer not to get the BTR, and we want the customer to  
11 pay the BTR.

12 Q. Our allegations in this case are that the city didn't want  
13 the customer to get the BTR.

14 MR. ARANA: Objection.

15 BY MR. HUDSON:

16 Q. Let me ask to you look under -- I don't know where it is  
17 there. It's a separate piece of paper. It may be in that  
18 white binder.

19 THE COURT: Go up there and find it for him. He won't  
20 know where it is.

21 Counsel is giving me an extra one.

22 BY MR. HUDSON:

23 Q. Take a look at that.

24 Do you recognize that? Can you tell us what it is?

25 A. It appears --



1           THE COURT: For the record, it's Plaintiff's 17 you  
2 are showing him, right?

3           MR. HUDSON: Yes, your Honor.

4           THE COURT: Go ahead.

5           A. This appears to be a screenshot from our system. I can't  
6 verify for sure because I didn't produce this document, but it  
7 appears to be a screenshot from our system.

8           Q. Let's start with this. What system is this?

9           A. This is our database where we run BTR renewals.

10          Q. So this is under your division finance?

11          A. Correct. We would be the users of this system.

12          Q. Can you tell the date of this document?

13          A. I cannot tell the date of this document.

14          Q. Look at the top. There is a red line. Can you read what's  
15 in the red line?

16          A. I read on the red line "active holds exist on this record."

17          Q. What does that mean?

18          A. That means that this record has outstanding -- this means  
19 that this partial serial number, the address, has outstanding  
20 monies or violations with the city, outstanding monies owed to  
21 the city or outstanding violations with the city.

22          Q. Let's go into the white box in the middle. Read that for  
23 the record.

24          A. Want me to read out loud?

25          Q. Yes.

1 A. The white box in the middle says, "As per city attorney  
2 office, close BTR for nonpayment. Entity cannot reply for  
3 liquor sales and/or entertainment at 865 Collins Avenue."

4 Q. Let's start with the first sentence. That's really  
5 unnecessary, isn't it, because if the fiscal year had come and  
6 gone, that 16/17 BTR is finished, correct?

7 A. That is correct. If the fiscal year came and went and the  
8 BTR was not paid, the BTR would be moved to a closed status by  
9 my staff.

10 Q. There was no reason for that first sentence, correct? The  
11 city attorney didn't need to do that. It would happen as a  
12 matter of law, as you testified?

13 A. No. It could have happened. I don't know who typed this  
14 or if it even came from our system, but the city attorney could  
15 reach out to us and say, hey, by the way, this BTR is in an  
16 expired state, remember to close it. That's not within the  
17 realm of possibility.

18 Q. Is that the ordinary course?

19 A. No. This case is not the ordinary course, though.

20 Q. I would agree with you.

21 Let's look at the next sentence. "Entity cannot  
22 reapply for liquor sales and/or entertainment at 865 Collins  
23 Avenue."

24 Any idea why that's there?

25 A. The entity can reapply and my department would accept an

1 application for this entity. Now, this might mean that this  
2 type of use is no longer permitted in this area. So it may be  
3 it's just giving a heads-up.

4 Now, this note here, if it's from our system, I have  
5 no way of knowing who typed this note in. Many departments use  
6 this system -- finance, building, planning, fire, code. So I  
7 don't know who typed this note in the system. But the entity  
8 can reapply. My department would accept the application and we  
9 would route it to the regulatory departments. They are the  
10 ones that would ultimately say entity cannot reapply for liquor  
11 or sales or entertainment at 865 Collins Avenue.

12 Q. So --

13 A. It might be there is a heads-up, this use is no longer  
14 permitted at this area because this BTR has expired.

15 Q. If my client was provided this document by somebody at your  
16 counter, are you saying it was a mistake to give him this?

17 MR. ARANA: Objection.

18 A. No, I am not. If they came, if the customer came to our  
19 office and there is something in our system that pertains to  
20 his account, my staff would give them that information. The  
21 same way he came on June 27 and we gave him the invoice that  
22 was due, we would give him the information pertaining to his  
23 account, if indeed this came from my office.

24 BY MR. HUDSON:

25 Q. Okay. One of our frustrations is we can't see the rest of

1 this document, but let's go to the left of the white box about  
2 three quarters down. There is a word "violations" in all caps.

3 Do you see that?

4 A. I see that.

5 Q. Is there any way, based on your knowledge of the system and  
6 this case, you can help figure out what might be behind that?

7 A. I need to go into our system and see what's there. And  
8 this could be a simple box. It could have been moved from  
9 somewhere else, it could have been moved and placed on top of  
10 that. The system works in Windows so you can minimize and  
11 maximize the windows.

12 Q. It looks like it's a regular window someone pulled up?

13 THE COURT: If you look at the next line, it starts  
14 out the same, right?

15 THE WITNESS: It could be. If that's a note, you  
16 click on that line underneath the violations. When you click  
17 on that, this other box pops up. But I can't know for sure  
18 unless I'm in the system.

19 BY MR. HUDSON:

20 Q. Sure. But the Judge accurately points out the next line is  
21 interesting as well. If you look at it, it also says, "As per  
22 the city attorney office, close BTR for nonpayment," and all we  
23 can see on the rest of that line is a date on the other side,  
24 which was the day they shut our business down, but it was five  
25 and a half hours earlier in the day.

1           Is that a fair reading of that document?

2           THE COURT: Which side had that? Were they closed in  
3 the morning?

4           MR. HUDSON: Closed at 5:00 p.m. on 10/6, your Honor.  
5 It appears, we believe this says 10/6, 11:33 a.m.

6 BY MR. HUDSON:

7 Q. Is that a fair reading of that document of what little we  
8 could see?

9 A. Could you repeat that?

10 Q. The second line under the "violations" also indicates the  
11 city attorney's office gave a direction in this case to close  
12 the BTR.

13 A. You could make that assumption from reading this, but the  
14 BTR would have been closed anyway by my staff because it has  
15 expired.

16 Q. Exactly. There was no need for that direction. Why would  
17 the city attorney then give you the direction?

18 A. I don't know. You should ask the attorney.

19           MR. ARANA: Objection.

20           THE COURT: That's fair. Don't need to know.

21           MR. HUDSON: I'll take it step by step, Judge.

22 BY MR. HUDSON:

23 Q. Have you spoken -- who would the city attorney in this case  
24 have been? Would there have been a particular city attorney?

25 A. The city attorney I dealt with --

1 MR. ARANA: I am going to instruct the witness not to  
2 disclose attorney-client confidences or object on the grounds  
3 that --

4 THE COURT: He can tell us the name of the city  
5 attorney. That's not a confidence.

6 MR. HUDSON: I am taking it step by step to be  
7 careful.

8 THE COURT: Tell us who the city attorney is.

9 THE WITNESS: Mr. Alex Boxner.

10 BY MR. HUDSON:

11 Q. Is he generally the deputy city attorney responsible for  
12 these things?

13 A. I don't know his official title.

14 Q. Okay. Prior to the institution of this lawsuit have you  
15 ever had a conversation with attorney Boxner about this case?

16 A. No.

17 MR. ARANA: Objection. Attorney-client privilege.

18 THE COURT: Sustained.

19 MR. HUDSON: I'm sorry, your Honor?

20 THE COURT: Sustained.

21 BY MR. HUDSON:

22 Q. Have you had a conversation with anyone in the city not  
23 involving the city attorney about this case prior to the  
24 lawsuit?

25 A. With my staff while we were preparing for this lawsuit and

1 preparing exhibits. I have spoken with my staff in providing  
2 exhibits and locating exhibits in our database.

3 Q. I'm sorry. Maybe I misspoke.

4 Prior to filing the lawsuit, was this on your radar  
5 for any reason?

6 A. No. Usually when something gets to my level it is because  
7 there's some sort of issue. So that's how my involvement -- I  
8 got involved with this sometime in October.

9 Q. Turn to Exhibit 3 in the white binder. Any idea what these  
10 few pages are?

11 A. I can read what it says here, but it's not a document that  
12 I am familiar with.

13 Q. I pulled these off the City of Miami Beach website. Does  
14 that help refresh your recollection at all?

15 A. No, because I work for the finance department. I don't  
16 work for the special master's office, so I wouldn't go into  
17 this website.

18 Q. Let's take a look at something anyway and see if you have a  
19 comment on it.

20 MR. ARANA: Object on foundation and relevance  
21 grounds.

22 THE COURT: Let's see what it is first.

23 BY MR. HUDSON:

24 Q. Turn to the second page. The fourth bold item, "I just  
25 received," do you see that?

1 A. Yes.

2 THE COURT: What page? I'm sorry.

3 MR. HUDSON: It is the second page of the exhibit,  
4 your Honor. You are looking at Exhibit 3 in the white book.

5 THE COURT: Okay. Go ahead.

6 MR. HUDSON: Exhibit 3, fourth item down. "I just  
7 received."

8 THE COURT: Got it.

9 BY MR. HUDSON:

10 Q. I will read it into the record.

11 "I just received a letter from the finance department  
12 that my occupational license, certificate of use cannot be  
13 renewed because of a special master case. What do I do?"

14 Seems to be an answer. "Call the special master  
15 office. We will advise you accordingly."

16 So you are in the finance department, right?

17 A. I am.

18 Q. That's your specialty.

19 It seems that this document suggests that if you have  
20 a special master case there may be a hold on your BTR. Is that  
21 unfair?

22 A. Yes. This would be a hold on a BTR, how I am reading it.

23 Again, I am not -- this is not a document that was  
24 prepared by my office. I received a letter from the finance  
25 department that my occupational license, certificate of use



1 cannot be renewed because of a special master case. What do I  
2 do. This can very well be there is a violation, the judge has  
3 adjudicated guilty, the violation has been set \$1,000 or  
4 there's a daily running fine, you need to -- if someone were to  
5 come to my office and they have this, we would refer them to  
6 the special master office.

7 So this is an accurate statement.

8 Q. Is it accurate or inaccurate?

9 A. It would be an accurate statement. If someone comes to our  
10 office and there is a special master -- a special master has  
11 adjudicated someone guilty, they owe the city monies. We would  
12 refer them to the special master office so the special master  
13 can provide them an invoice for the monies that are owed.

14 Q. I'm sorry. Maybe it's the echo in here. I will ask you to  
15 spell it. Inaccurate with an I-N or accurate with an A-C-C --

16 A. I believe this --

17 Q. -- statement?

18 A. I believe this statement is accurate.

19 Q. You believe it's accurate?

20 A. Yes.

21 Q. In other words, during a special master proceeding your  
22 occupational license cannot be renewed?

23 MR. ARANA: Objection. Mischaracterizing the  
24 testimony.

25 THE COURT: Overruled.

1 Answer if you can.

2 A. If a special master has indicated a business guilty, they  
3 have gone before the special master, they have been adjudicated  
4 guilty, there is a fine. Sometimes there's a daily running  
5 fine. You need to get that number. So my finance staff would  
6 send someone to the special master office. You need to get an  
7 invoice. Let's say they went to pay that special master  
8 violation. My finance staff would direct the business to the  
9 special master office so the special master office could print  
10 an invoice for them so they could go pay at the cashier.

11 Q. Let's talk about this. The agreed order, which is Exhibit  
12 7, was entered on Thursday, September 28. The Judge corrected  
13 me this morning. The following Monday was October 2nd. So all  
14 BTRs in the state, I think you told us earlier, right, expire  
15 on September --

16 A. They are good for fiscal year October 1 through  
17 September 30.

18 Q. So they expire September 30, 11:59 p.m., which would have  
19 been on this date, would have been a Saturday, I believe.

20 A. September 30 was a Saturday, yes.

21 Q. So if the special master order wasn't entered until  
22 September 28th, is there any procedure by which that person  
23 could have cleared those violations soon enough to preserve a  
24 16-17 BTR?

25 A. They could have paid their BTR. They could have paid the

1 fiscal year 2016/17 BTR before the 30th of September.

2 Q. If their testimony was they tried and they were rejected?

3 A. I wouldn't believe that they tried and they were rejected  
4 because there's so many mechanisms to pay. They pay it in  
5 person with cash, cashier's check or credit card, money order,  
6 they could pay online, they could pay at our satellite office,  
7 they could mail a payment, mail a payment to the lockbox. So I  
8 would say that's a false statement.

9 We would not refuse. If someone came in to pay a BTR  
10 we would not refuse payment. It doesn't make sense. It is not  
11 our business process.

12 Q. The distinction that I think needs to be made was you would  
13 have accepted payment, but that doesn't release the BTR?

14 A. We would not release the BTR. If there's outstanding  
15 monies owed to the city, you need to take care of that first.

16 Q. As of September 28, if this agreed order had not been put  
17 in the system, would that gentleman have been able to pay the  
18 BTR? Would you have accepted the money?

19 A. Correct, we would have accepted the money.

20 Q. But if he hadn't by Friday 5:00 p.m. close of business,  
21 either done -- he had to do something else.

22 A. If he had come to my office and said I want my BTR, I need  
23 to get my BTR today, here is the money, let me first pay you  
24 the BTR, I want to get my BTR, we would look at this document.  
25 We would have reached out to special master, the city

1 attorney's office to see what needed to be done to get the BTR.

2 If that did not happen, if he did not come to my  
3 office -- I don't recall him ever asking for me or asking for a  
4 supervisor. None of my supervisors in preparing for this case  
5 ever recall him requesting to speak to a supervisor. Because  
6 if there is a problem, I'm here. I want to pay for something,  
7 I need to get it and you don't get what you want, I think  
8 common sense would dictate to call for a supervisor, and the  
9 next person would come in. That did not happen.

10 Q. Common sense would dictate that someone that had a very  
11 valuable business wouldn't lose it for \$1,000 either.

12 A. It's not common sense.

13 Q. I think I heard what you said, but let's be clear. You  
14 couldn't do it on your own. You had to either go to the  
15 special master, try to find him on Thursday afternoon or  
16 Friday. They only work on Thursdays, right?

17 A. The special master staff, the clerks of the special masters  
18 work at City Hall Monday through Friday during regular business  
19 hours.

20 Q. You would have had to go to the special master, and I don't  
21 know if it's this one or not but let's use the special master  
22 in general for the moment, or the city attorney to get them to  
23 clear it?

24 A. Or the city manager.

25 Q. Correct. If they were predisposed not to do so because

1 they wanted to close this liquor store down, you may not have  
2 been able to find them within a day. Strike that.

3 THE COURT: Let me ask a question. As I understand  
4 it, at least the testimony until now, none of these violation  
5 notices were appealed within the 20-day time period that's  
6 called for under, I don't know if it's under your code or on  
7 the back of the ticket. So taken that for a granted, if -- but  
8 the matter was before a special master. Somehow they were able  
9 to get it in front of a special master on August --

10 MR. HUDSON: Twenty-eight it appears when the deal was  
11 made.

12 THE COURT: If that's in front of a special master but  
13 not pursuant to an appeal, but just in front of a special  
14 master under some other circumstances, would the BTR be issued  
15 if you were aware it was in front of a special master?

16 THE WITNESS: If we are aware it was in front of a  
17 special master being appealed or being negotiated, we would  
18 release the BTR if the BTR had been paid.

19 THE COURT: And assuming that the special master had  
20 ruled and imposed a fine, once the special master rules and  
21 imposes a fine, then the fine needs to be paid before you  
22 release the BTR.

23 THE WITNESS: Yes, sir.

24 MR. HUDSON: Judge, just give me a moment. I am  
25 almost there.

1 BY MR. HUDSON:

2 Q. Beach Blitz ultimately did pay online for the BTR, correct?

3 A. They paid online sometime in mid-October or first week of  
4 October, approximately.

5 Q. October 11.

6 Would it surprise you if they testified that they  
7 tried to pay online before and that was the first time at which  
8 the system would accept the payment?

9 A. Yes, that would surprise me.

10 Q. If they had paid on October 11 of '17, was that a payment  
11 for the old BTR that's now gone?

12 A. That's a payment that's in suspense right now. We are  
13 waiting for the outcome of this either to refund the money or  
14 see what the judge determines. But that payment is in  
15 suspense. It can't be applied to 2017 because that permit has  
16 expired.

17 Q. Cannot, correct?

18 A. Cannot, correct.

19 Q. So --

20 A. We were wondering, perhaps, if he intends to reapply, it  
21 could be applied, reapplied to his new application.

22 Q. Well, if the city's internal system already said don't  
23 reapply per the city attorney, what's point in reapplying?

24 A. That's not -- the case, if he comes in and reapplies, we  
25 accept his application, then we route it to the regulatory

1 department. The regulatory department, we are the ones that  
2 make that determination -- planning and zoning, building, fire,  
3 or code compliance.

4 That's not my finance department to say whether or not  
5 that business gets approved or rejected.

6 Q. One last question. I know I have asked it, but I want to  
7 ask it one more time because it's important.

8 THE COURT: It's like asking for an objection.

9 MR. ARANA: Asked and answered.

10 MR. HUDSON: I am explaining in advance. I am trying  
11 to get covered.

12 THE COURT: Go ahead.

13 BY MR. HUDSON:

14 Q. You testified as to the policies and procedures, and I get  
15 that. This case, as you said, is not the normal case. We  
16 agree with you. You do not have personal knowledge that  
17 anybody at a counter told Mr. Doar, the owner of Beach Blitz,  
18 that he was not able to get a BTR on the several times that he  
19 and his hired professionals went down there to try to get one,  
20 correct?

21 A. Please repeat the question.

22 Q. You have no personal knowledge of what the people at the  
23 counter told Mr. Doar; is that correct?

24 A. I don't have any personal knowledge. I know what our staff  
25 are trained to do and what they are trained to say to all of

1       our customers.

2       Q.   Thank you.

3               MR. HUDSON:  No further questions.

4               MR. ARANA:  Could I have two questions?

5               THE COURT:  Yes.

6                               REDIRECT EXAMINATION

7       BY MR. ARANA:

8       Q.   Counsel asked you whether you know whether staff may have  
9       disregarded your procedures and refused payment of the BTR,  
10      correct?

11      A.   Yes.

12      Q.   Can you testify for certain that the online system does not  
13      shut anyone out from making a payment because there is an  
14      outstanding violation?

15      A.   The online system does not shut anybody out from making a  
16      payment because there is a violation.  On the contrary, we  
17      accept payments.  If there's an invoice, the online system will  
18      accept payments for that invoice number at any time.

19      Q.   And the online system can't disregard your instructions,  
20      correct?

21      A.   Correct.  It's an automated system.

22               Many businesses when they are issued violations, they  
23      go online and they immediately pay.  Just because there's a  
24      violation doesn't prevent them from making an online payment  
25      for a BTR.



1 Q. At any time from July of 2016 until September 30 of 2017,  
2 Beach Blitz could have made an online payment for its BTR,  
3 correct?

4 A. Correct. Yes, sir.

5 Q. If it had done that, then, when it's outstanding, its  
6 outstanding violations were paid, the BTR would have issued?

7 A. We would have issued it, yes.

8 Q. That's the case even if the outstanding violations were  
9 paid in October of 2017, correct?

10 A. Come again.

11 Q. The BTR would issue even if the outstanding violations were  
12 not paid until early October?

13 A. Correct, yes.

14 Q. Because the payment was made during the fiscal year?

15 A. During the fiscal year, correct.

16 MR. ARANA: Thank you.

17 THE COURT: Sir, thank you. You may step down. You  
18 are excused.

19 (Witness excused)

20 THE COURT: The defendants can call their next  
21 witness, please.

22 HERNAN CARDENO,  
23 having been first duly sworn on oath, was examined and  
24 testified as follows:

25 THE WITNESS: Cardeno, C-A-R-D-E-N-O, Hernan,

1 H-E-R-N-A-N.

2 DIRECT EXAMINATION

3 BY MR. BYERS:

4 Q. Good afternoon. Could you please tell us what your  
5 occupation is.

6 A. Director of the code compliance department for the City of  
7 Miami Beach.

8 Q. And how long have you been at that position?

9 A. Since 2014.

10 Q. Does code enforcement issue BTRs?

11 A. No, they do not.

12 Q. Does code enforcement decide whether to issue a BTR?

13 A. No, they do not.

14 Q. And if you could go to the black book there. Those are  
15 defendants' exhibits which already have been admitted by the  
16 court.

17 Look to tab 2, which is Defendants' Exhibit 2.

18 Are you there?

19 A. Yes.

20 Q. Did you prepare an affidavit in this case?

21 A. Yes, I did.

22 Q. And is Exhibit 2 that affidavit?

23 A. Yes, it is.

24 Q. Is there anything you need to clarify or correct in that  
25 affidavit?

1 A. Yes, there is. On page 2, paragraph 6.

2 Q. Can you explain what that clarification or correction is?

3 A. It says here: "Beach Blitz did not cease operations or  
4 apply for or pay for a BTR license. Instead, Beach Blitz  
5 appealed all three citations to the special master. On  
6 September 28, 2017, the special master entered an agreed order  
7 in which Beach Blitz admitted to the violations and agreed to  
8 pay \$1,000 to resolve all three citations."

9 It's really just a matter of clarification. It still  
10 is in appeal, but it wasn't a normal appeal through the regular  
11 protocol or procedures. Meaning it didn't go through the  
12 special master, clerk of the court. Rather, it was directly  
13 with the city attorney's office, and then agreed order was  
14 placed on the docket calendar for the special master to hear  
15 and ratify.

16 Q. Is there anything else you need to correct or clarify in  
17 that affidavit?

18 A. I don't believe so.

19 Q. If you could turn to Exhibit 10, which is also tab 10.

20 A. Yes.

21 Q. Do you recognize this document?

22 A. Yes, I do. This is a civil infraction code violation form.

23 Q. What is the violation for?

24 A. So this violation is dated December 21, 2016. The  
25 violation is for selling alcoholic beverages outside of the

1 approved hours by ordinance.

2 Q. And was that a violation in the city code on December 21,  
3 2016 to sell liquor before 10:00 a.m.?

4 A. Yes, it was.

5 Q. If we go to page 2 of that document. Is there a procedure  
6 there for an appeal?

7 A. Yes. It says, "fines may be appealed within 20 days of  
8 receipt of this notice."

9 Q. To your knowledge, did Beach Blitz appeal within 20 days of  
10 that notice?

11 A. No.

12 Q. I want to move next to Exhibit 11.

13 A. Yes.

14 Q. Do you recognize this document?

15 A. Yes, I do.

16 Q. What is it?

17 A. This is another civil citation form issued by the code  
18 compliance department for sales of alcohol outside of the  
19 prescribed hours.

20 Q. Was that a violation of the city code on June 25, 2017?

21 A. Yes.

22 Q. And there's an appeal process listed on that citation as  
23 well?

24 A. Yes, there is. Within ten days of receipt of the notice.

25 Q. Did Beach Blitz appeal, to your knowledge, within ten days

1 of the notice?

2 A. No.

3 Q. We now move to Exhibit 12.

4 Do you recognize this document?

5 A. Yes.

6 Q. What is it?

7 A. This is a notice of violation for failing to obtain a  
8 business tax receipt.

9 Q. And to your knowledge, did Beach Blitz possess a business  
10 tax receipt on June 25, 2017?

11 A. No, they did not.

12 Q. And the violation states that fines may be appealed within  
13 ten days; is that correct?

14 A. Yes.

15 Q. And did Beach Blitz appeal within the ten days?

16 A. No, they did not.

17 Q. Now, I want to look at the notice of violation. Does this  
18 notice of violation state "cease immediately until you obtain a  
19 business tax receipt from the City of Miami Beach?"

20 A. Yes.

21 THE COURT: Where is that?

22 MR. BYERS: First line right underneath "reference,"  
23 your Honor. Center of the page.

24 THE COURT: I see it. Okay.

25

1 BY MR. BYERS:

2 Q. When issuing these violations, does code enforcement expect  
3 that the business will cease operations immediately and attempt  
4 to obtain a BTR?

5 THE COURT: For the record, it says "cease." I  
6 thought you said seize, as in take.

7 BY MR. BYERS:

8 Q. Cease operations immediately.

9 A. Yes, sir.

10 Q. I will ask that again.

11 When code enforcement issues these citations, does it  
12 expect that the business will cease operations until it obtains  
13 a BTR?

14 A. Yes.

15 Q. To your knowledge, did Beach Blitz cease operations?

16 A. No.

17 Q. To your knowledge, did Beach Blitz obtain a BTR for the  
18 fiscal year of 2016/2017 at any time thereafter?

19 A. They did not.

20 Q. We now move to Exhibit 14, sir.

21 A. Yes.

22 Q. Do you recognize this document?

23 A. Yes. This is a notice of violation, issued on October 6,  
24 2017, for failing to obtain a business tax receipt as required  
25 by ordinance.

1 Q. And to your knowledge, on October 6, 2017 did Beach Blitz  
2 have a BTR license?

3 A. No, they did not.

4 Q. Does this state they have an ability to appeal within ten  
5 days of violation?

6 A. Yes.

7 Q. To your knowledge, did any appeal take place?

8 A. No, they did not.

9 Q. The notice again says, "cease immediately until you obtain  
10 a business tax receipt from the City of Miami."

11 A. Yes.

12 Q. Did code enforcement close Beach Blitz's operations down on  
13 October 6, 2017?

14 A. Yes.

15 Q. Why was it closed?

16 A. Well, because they still did not have a business tax  
17 receipt to operate the business, and so they were closed until  
18 they could obtain the business tax receipt.

19 Q. Did the City of Miami Beach code require that a business  
20 have a BTR in order to operate in the City of Miami Beach?

21 A. Yes, they do.

22 MR. BYERS: No further questions.

23 THE COURT: Any cross?

24 Actually, I have a question for you. Maybe counsel  
25 can help me out. Number 12. It says, "amendment, notice of

1 violation." Was there an initial violation that was  
2 handwritten?

3 THE WITNESS: Usually, your Honor, there is a  
4 handwritten violation that's written out in the field, and then  
5 this is the computer-generated letter that is sent out.

6 THE COURT: This is mailed to the offender?

7 THE WITNESS: Sometimes it's mailed, sometimes it's  
8 hand delivered.

9 THE COURT: Do you know what was the case with this  
10 one?

11 THE WITNESS: I believe this one was hand delivered.

12 THE COURT: Why do you believe that?

13 THE WITNESS: Because it's signed by a manager at the  
14 bottom.

15 THE COURT: That's a manager of the business; is that  
16 what it is?

17 THE WITNESS: Yes.

18 THE COURT: I see. Okay. Good enough. Thanks.

19 CROSS-EXAMINATION

20 BY MR. HUDSON:

21 Q. Was it hand delivered by the two police officers, by the  
22 code enforcement gentleman around 5:00 p.m. on October 6?

23 THE COURT: The one I was referring to was the one  
24 issued on June 25. I think you are referring to Exhibit  
25 14.



1 BY MR. HUDSON:

2 Q. Let me turn to Exhibit 14, please.

3 A. Yes, this one was also hand delivered.

4 Q. Okay. Was it hand delivered in this format or was there a  
5 typical citation, handwritten citation?

6 A. It was this form itself, which is also signed in this  
7 particular case by the business owner.

8 Q. This was prepared in advance by someone at the city?

9 A. Yes.

10 Q. Why did it happen this way as opposed to the standard  
11 handwritten version?

12 A. They are both notices of violation. So if we don't have  
13 anyone at the business that we contact, we send out the letter  
14 certified return receipt requested. In this particular case  
15 they went ahead and printed the notice of violation and hand  
16 delivered it.

17 Q. Can you tell me from this document or any other knowledge  
18 you have when this document was prepared?

19 A. I would say it was probably prepared on the same day,  
20 October 6, 2017.

21 Q. But you don't know that for sure. Sir, do you know that  
22 for sure?

23 A. I do not.

24 THE COURT: Do you mind if I ask some questions.

25 On this notice of violation and the other one it says

1 ten days, but on the handwritten one it says 20 days to appeal.  
2 Is there a reason why there is a difference, or is there a  
3 statute that allows for ten if it's a --

4 THE WITNESS: You know what, your Honor, it may be  
5 because of the amendment to the ordinance for the appeal time.  
6 So that may be why there is a difference.

7 THE COURT: What do you mean? An amendment to what  
8 ordinance?

9 THE WITNESS: When the ordinance was amended where  
10 business tax receipts could be appealed, the ten days' language  
11 was included there.

12 THE COURT: Well, if we look at 12, the June 25 one,  
13 that one says ten days. This is the amendment notice of  
14 violation dated June 25th.

15 MR. BYERS: Your Honor, I can state that there was an  
16 amendment in that time period between December and the next  
17 citation in July -- I'm sorry, June 25, where it was moved from  
18 20 days to ten days.

19 THE COURT: Where is the June 25 citation in here?

20 MR. BYERS: Exhibit 11.

21 THE COURT: Of which one?

22 MR. BYERS: Defendants' black book. And you will see  
23 both citations on --

24 THE COURT: I see.

25 MR. BYERS: -- June 25. Both are ten days.

1 THE COURT: I got it. I was thinking 20 days. I  
2 guess we had only discussed the old one. Okay. I got it. No  
3 problem.

4 Go ahead, counsel. I'm sorry.

5 BY MR. HUDSON:

6 Q. Let's look at 14 again in the black book.

7 A. Yes.

8 Q. The business was open and operating at the time, correct?

9 A. Yes.

10 Q. So is there anywhere on this document where the person  
11 receiving the violation was warned that their business could be  
12 closed down immediately without further notice?

13 A. Well, it does say under the reference section "cease  
14 immediately until you obtain a business tax receipt."

15 Q. But there's nothing that says if you don't cease  
16 immediately we will come shut you down without further notice,  
17 correct?

18 A. No.

19 Q. What was the authority of code enforcement and two Miami  
20 Beach police officers that code enforcement relied on to shut  
21 that gentleman's business down that afternoon at 5:00 p.m.?

22 A. That authority would be the City of Miami Beach Code of  
23 Laws and Ordinances. I believe it's Section 102-377(e).

24 Q. I am going to read to you --

25 MR. HUDSON: May I read that statute, as I understand

1 it, into the record at the moment so that the witness can hear  
2 it.

3 THE COURT: Yes. I know somebody filed a copy of the  
4 code, I think.

5 MR. BYERS: It's Exhibit 16 of defendants' exhibits in  
6 the black book. Go to page 35.

7 THE COURT: Page 35 of the document?

8 MR. BYERS: Of the document itself.

9 THE COURT: Page 35 of 69 you are talking about?

10 MR. BYERS: I am 36 of 69, your Honor.

11 BY MR. HUDSON:

12 Q. Sir, while we are all trying to find this, would your  
13 department or you -- you are the head of the department, right?

14 A. Yes.

15 Q. Would you rely on your own interpretation of how to read  
16 these statutes or would you have to go to the city attorney's  
17 office on how to read these statutes if there was an issue?

18 A. The answer is it depends.

19 Q. Depends on what?

20 A. Well, there is several codes of laws and ordinances. Some  
21 that we handle more frequently than others. So in those, in  
22 those particular cases, we would confer with the city  
23 attorney's office. On the more complex investigations, then of  
24 course, yes, we would seek guidance from the city attorney's  
25 office.

1 Q. So let me read this for the record. It's Section 102-377  
2 of the Miami Beach Code of Ordinances, subsection (e), as in  
3 Edward: "As an additional means of enforcement and  
4 supplemental to the above, if any person carries on or conducts  
5 any business for which a tax receipt is required by this  
6 article without first obtaining such tax receipt, then the city  
7 may prevent the business from operating until the required tax  
8 receipt is obtained."

9 Do you see that?

10 A. Yes.

11 Q. So if you go back up to (b), as in boy, in the same  
12 section, there are enforcement mechanisms for failure to pay a  
13 BTR. But those mechanisms require notices and potential  
14 hearings and so forth, correct?

15 A. Yes.

16 Q. In your view, can you just jump to (e) and rely on (e) or  
17 do you have to go through the notices in (b) first?

18 MR. BYERS: Objection. First, this is a legal  
19 argument.

20 THE COURT: Overruled.

21 A. So the way I am reading subsection (b), that applies to  
22 violations of any other provision of this article, and so  
23 because it's subsection (b), the only other section before it  
24 of course is (a), which is a business who carries on operations  
25 without first obtaining a business tax receipt.

1 Q. So let's go to (a). What are the procedural protections in  
2 (a)?

3 MR. BYERS: Same objection. Legal conclusion.

4 THE COURT: Overruled.

5 A. Did you say procedural protections?

6 Q. Yes.

7 You have dealt with (a) before. I am sure you  
8 probably deal with it on a daily basis, right?

9 A. Yes.

10 Q. So under (a), is it your understanding, or any of the  
11 ordinances that are referenced in (a), aren't there notice  
12 requirements before folks can be fined or bad things can happen  
13 to them under the code?

14 A. Usually there is a notice of violation that will trigger  
15 some type of process, whether that is a fine or some action  
16 that the violator has to take to cure.

17 Q. Right. Typically the first step would be a notice. The  
18 second step would be, sometimes alternative, that you can  
19 either pay or you can elect a hearing or you can do that,  
20 right? That's the way it normally works, correct?

21 A. Generally, yes.

22 Q. In this case what actions under either (a) or (b) did the  
23 city take before it went to (e)?

24 A. In this particular case I believe the business had already  
25 received at least one notice of violation for operating without

1 a business tax receipt.

2 Q. Turn to Exhibit 7 in the white binder. Do you see that?  
3 Obviously you have seen that because the first thing your  
4 counsel asked to you do was to clarify a statement in your  
5 affidavit filed in this case under oath, right? So you have  
6 seen this order?

7 A. Yes.

8 Q. And what was that clarification again?

9 A. The clarification was that under paragraph 6 of my  
10 affidavit, that the way the word appeal is used is that it  
11 wasn't the normal protocols, that it was appealed to the  
12 special master, clerk of the court but, rather, they went to  
13 the state, city attorney's office and then arrived at this  
14 agreed order which was placed before the special master.

15 Q. So the City of Miami Beach, based on your testimony, agreed  
16 to some sort of different process from the standard process,  
17 right? Fair statement?

18 A. I wouldn't say it's standard because there is a lot of  
19 stipulated agreements and agreed orders that are entered into  
20 on violations. So --

21 Q. But it didn't go the normal way it would go, correct?

22 A. It didn't go the way through the special master, clerk's  
23 office.

24 Q. But it did end up in a special master proceeding, didn't  
25 it?

1 A. Yes.

2 Q. And the City of Miami Beach participated in that, didn't  
3 it?

4 A. Yes.

5 Q. So the City of Miami Beach waived all of its other  
6 procedural protections by doing the special process and  
7 procedure, didn't it?

8 MR. BYERS: Objection, your Honor. Legal conclusion.

9 THE COURT: Sustained.

10 BY MR. HUDSON:

11 Q. Do know why the city attorney has a different path than the  
12 normal path in this case?

13 MR. BYERS: I would suggest not to discuss any  
14 attorney-client communications you may or may not have had with  
15 the city attorney.

16 MR. HUDSON: I will amend the question to exclude any  
17 conversations he's had with the city attorney or his defense  
18 attorneys, your Honor.

19 THE COURT: All right.

20 A. So, your Honor, in my experience when we have stipulated  
21 agreements or agreed orders, it's through a variety of  
22 different forms that it comes to us. Sometimes, for example,  
23 the special master will ask the violator to meet with the city  
24 attorney's office and see if they can come to an agreement and  
25 then later schedule it for another date with a stipulated or



1     agreed order.  So there is different formats of how it could  
2     have arrived at this agreed order.

3     BY MR. HUDSON:

4     Q.  Have you had any conversations with Deputy City Attorney  
5     Boxner prior to filing this lawsuit?

6             MR. BYERS:  Objection.

7             THE COURT:  I will allow you to answer whether or not  
8     or require you to answer if you had conversations without  
9     revealing the content of the conversation.

10    A.  Regarding this lawsuit?

11    BY MR. HUDSON:

12    Q.  No, about Beach Blitz 865(d) prior to the filing of this  
13    lawsuit?

14             MR. BYERS:  Same objection.

15             THE COURT:  Overruled.

16    A.  Yes.

17    BY MR. HUDSON:

18    Q.  What were those conversations about?

19             MR. BYERS:  Objection.

20             THE COURT:  Sustained.

21    BY MR. HUDSON:

22    Q.  When were those conversations?

23             MR. BYERS:  Objection.

24    A.  Probably --

25             THE COURT:  That objection is overruled.

1 A. Probably around October 6th.

2 Q. That's the day that Beach Blitz was shut down, right?

3 A. Yes.

4 Q. Did the city attorney's office direct code enforcement to  
5 shut Beach Blitz down?

6 MR. BYERS: Objection.

7 THE COURT: Sustained.

8 Your objection, by the way, is attorney-client  
9 privilege, am I correct?

10 MR. BYERS: Yes, your Honor.

11 THE COURT: Okay. Sustained.

12 BY MR. HUDSON:

13 Q. See the blue piece of paper in front of you, blue and  
14 white?

15 A. Yes.

16 Q. That's been marked as Plaintiff's 17. Take a look at that  
17 and tell me, tell the court, if you can tell us what this is.

18 A. It looks to be some type of notes entered on our city  
19 enterprise system.

20 Q. Read the first sentence that's contained in the white  
21 rectangle in the center of the page.

22 MR. BYERS: Objection for lack of personal knowledge  
23 of this document.

24 THE COURT: Overruled.

25 A. "As per city attorney's office, close BTR for nonpayment.

1 Entity cannot reapply for liquor sales and/or entertainment at  
2 865 Collins Avenue."

3 Q. What system are we looking at, do you know? What's the  
4 program that we are looking at here?

5 A. I believe this is the city's enterprise system, which is  
6 known as EnerGov.

7 Q. Do you have access to this system?

8 A. I do have access to this system.

9 Q. Any idea what that note means?

10 A. No.

11 Q. Have you ever seen that note before?

12 A. No.

13 Q. Any idea why the city attorney would suggest that the BTR  
14 be closed for nonpayment when it happened automatically?

15 MR. BYERS: Objection. Speculation.

16 THE COURT: Overruled.

17 BY MR. HUDSON:

18 Q. You can answer it, sir.

19 A. No.

20 Q. Had Beach Blitz applied for a new BTR for fiscal 17/18,  
21 given this note in the system would it have been denied?

22 MR. BYERS: Objection. He testified that they don't  
23 issue BTRs or deny them. We put on our other witness who was  
24 from finance.

25 THE COURT: Overruled.

1 Answer, if you can.

2 A. Your Honor, just as a separation of checks and balances,  
3 code compliance is really just the enforcement arm for several  
4 departments. We don't do any permitting. That's different  
5 entities.

6 Q. I understand. I asked if you know. If you don't, that's  
7 fine.

8 Do you know?

9 A. No.

10 Q. How many other times do you recall the City of Miami Beach  
11 sending police officers and code enforcement to a business for  
12 shutting down for not having a BTR?

13 A. Several.

14 Q. How many a year?

15 A. It varies. I am not certain. More than four, more than  
16 five.

17 Q. In a year. How many businesses are in Miami Beach?

18 A. Well --

19 Q. If you know.

20 A. I don't.

21 Q. That's fair.

22 THE COURT: And how many don't pay their BTR.

23 THE WITNESS: Well, licensed or unlicensed businesses,  
24 I don't know. With the advent of the short-term rental  
25 enforcements, you know, those are businesses that have no BTR

1 and those are shut down and vacated with police officers also.  
2 So I couldn't be certain.

3 MR. HUDSON: Nothing further, your Honor.

4 THE COURT: Any redirect?

5 MR. BYERS: A couple.

6 REDIRECT EXAMINATION

7 BY MR. BYERS:

8 Q. To your knowledge, Beach Blitz was operating without a  
9 license for more than 370 days; is that correct?

10 A. Yes.

11 Q. Opposing counsel talked to you about Section 102.377(e).  
12 If you could turn to that again. That's Exhibit 16 and, again,  
13 it's page 35 at the bottom and page 36 of 69 at the top.

14 A. Yes.

15 Q. It says that "As additional means of enforcement and  
16 supplemental to the above, if a person carries on or conducts  
17 any business for which a tax receipt is required by this  
18 article without first obtaining such tax receipt, then the city  
19 may prevent the business from operating until the required tax  
20 receipt is obtained."

21 Did I read that correctly?

22 A. Yes.

23 Q. If a business is shut down for failure to have a BTR, does  
24 code compliance tell them they need to go get a BTR?

25 A. Yes. That's the procedure. They usually tell the operator

1 or the violator how they can cure.

2 Q. And is that also stated in the notice of violations for  
3 failure to have a BTR?

4 A. Yes.

5 Q. And if the said business were to obtain a BTR, they then  
6 can open up and operate, correct?

7 A. Yes.

8 MR. BYERS: No further questions.

9 THE COURT: Thank you, sir. You can step down.

10 THE WITNESS: Thank you, your Honor.

11 THE COURT: This witness is excused, I take it. You  
12 can go back to Miami Beach.

13 (Witness excused)

14 THE COURT: Defendants have any other witnesses?

15 MR. ARANA: No further witnesses.

16 THE COURT: Any further evidence?

17 MR. ARANA: No, your Honor.

18 MR. HUDSON: No.

19 THE COURT: Okay.

20 MR. ARANA: I'm sorry, your Honor. We have one  
21 exhibit that we wanted to just introduce for the record.

22 THE COURT: What is that?

23 MR. ARANA: It is an ordinance.

24 THE COURT: Have you shown it to opposing counsel?

25 MR. ARANA: Yes.

1 MR. HUDSON: No objection.

2 MR. ARANA: Defendants' Exhibit 18.

3 THE COURT: That ordinance is what. So the clerk can  
4 describe it.

5 MR. BYERS: 2016-4062.

6 THE COURT: Okay.

7 MR. BYERS: First may we approach and add these to the  
8 books?

9 THE COURT: Yes. Give me one and give the clerk.  
10 Mr. Hudson, what do you say?

11 MR. HUDSON: Your Honor, my story hasn't changed.

12 THE COURT: It is my story and I am going to stick to  
13 it?

14 MR. HUDSON: That's probably the good news. My  
15 closing has changed, though.

16 THE COURT: I wonder why that is.

17 MR. HUDSON: Although we are going to get to the same  
18 place.

19 What we have learned today from the City of Miami  
20 folks was there was nothing normal about this deal. Claims  
21 that should have been appealed timely that may not have been  
22 appealed timely ultimately ended up in some sort of appellate  
23 process by special something. We don't know. City attorneys  
24 making notes on files that don't need to be made. City  
25 attorneys staying on top of cases and we wonder why they are

1 staying on top of particular cases. Nothing is right about  
2 this.

3 The city relies on statute 137 or 377-102377(e) which  
4 is supplemental to other statutes, meaning something else must  
5 come first. And (e) on its face doesn't have any due process  
6 involved at all. Again, something different.

7 One of our arguments, your Honor, is the application  
8 of (e) to shut him down as it applied in this case a minimum  
9 lacks procedural due process. My client stood before you and  
10 emotionally testified that he tried everything he could try  
11 from June 25 when he was in Israel, coming back two days later,  
12 to pay. He went there. We have evidence that he was there.  
13 We have pieces of paper that he was there. He tried to pay  
14 multiple times.

15 They say he didn't pay, but they say he didn't pay  
16 because the process. They would never have allowed him to do  
17 that. But they weren't there. That may be the process.

18 THE COURT: They said the process wouldn't allow him  
19 to pay. I think everyone is in agreement that he didn't pay.

20 MR. HUDSON: The evidence in this record, the witness  
21 is the only person in the courtroom who was there on multiple  
22 occasions and had the most to lose. The city has nothing to do  
23 to lose here.

24 THE COURT: Why didn't he pay the extra thousand  
25 dollars then if he had nothing to loss? What did he owe, 2600



1 for the BTR? He could have paid the thousand on the December  
2 thing and been done with it.

3 MR. HUDSON: Your Honor --

4 THE COURT: It would have been cheaper than him hiring  
5 Ms. Aiken and hiring Mr. Rosen or hiring Mr. Shir.

6 MR. HUDSON: That may be clear as we all sit here, and  
7 this group has spent a month figuring it out and we have given  
8 a presentation to you after a month of that, and they have had  
9 their internal folks tell them this and that, but that wasn't  
10 clear to him at the time. Because how many times did he say to  
11 you I would not have put my business at risk for a thousand  
12 dollars.

13 THE COURT: I think he made clear he didn't want -- he  
14 knew that if he paid -- I have to look back. I am sure if he  
15 knew it was one violation. But he certainly knew if he paid  
16 those three violations, he could pay his BTR. That's what I  
17 recall.

18 MR. HUDSON: Right, but he exercised his  
19 constitutional right and his ordinance right to appeal. Then  
20 the city agreed to waive all of those other things by let's do  
21 this other appeal.

22 Now, they are going to say we did him a favor. We are  
23 going to say you set us up. So the essence of my argument,  
24 Judge, and then can you ask me more specifics about various  
25 things if you want, but the essence of my argument is very

1       simple.

2               Nobody followed any procedures correctly here. The  
3       result was this gentleman has lost his business, that is one of  
4       the most valuable liquor store businesses in the country  
5       because of where it is, because it is half a block from Ocean  
6       Drive. The mayor wanted him out of business. They wanted  
7       Mangos out of business. They are malignant tumors. All the  
8       motivations were there. We know why they did it. We know why  
9       they had the special process. They set him up.

10              So what's the result of that? All I am asking to do  
11       today, Judge, is to open him up, let him generate revenue while  
12       we litigate this case. As we know, the balance that the old  
13       scales of justice have -- I am sure they are around here  
14       somewhere. Get them out. That's what you do in preliminary  
15       injunction hearings. What's harm to the city in letting him  
16       open, generating revenue, so he can defend himself and pay for  
17       his family and his kids until we make this decision? Because  
18       right now what we all know from today is that nothing happened  
19       the way it was supposed to happen in this case and we wonder  
20       why. I have my views, but you know what. Hopefully I have the  
21       next two years to convince you that I am right.

22              They set him up, your Honor. What is the downside at  
23       this point? We know you can't open a new liquor store in Miami  
24       Beach. There is your irreparable harm right there, in addition  
25       to all the others we cited. Losing a business is an

1 irreparable harm. It is a property right. The U.S. and  
2 Florida constitutions protect property rights. Ownership  
3 interests in business is a property right. They used the  
4 weapon of the BTR to take it away from him.

5 So in our view they are trying to change the narrative  
6 and say, oh, you don't have a property right in this license.  
7 The State of Florida gave us a license and told us we could  
8 operate. The City of Miami Beach can't shut us down. We  
9 allege and we believe we can prove and we believe the record  
10 today suggests we have a reasonable chance of proving because  
11 everything was done wrong in this case and everything was done  
12 different, and nobody relied on anything. Now they are relying  
13 on statutes and ordinances and technical stuff to try to say  
14 you are done. That alone demonstrates our entitlement to this,  
15 your Honor.

16 Give us a chance to defend ourselves and prove to you  
17 and to this court that we were wronged and we did not get any  
18 process. They did not tell you, not one of those witnesses  
19 told you today that he got process. They showed up on his door  
20 at 5:00 o'clock and you are closed. They used 377(e) to do  
21 that. 377 (e) has to come with two things before it, and they  
22 didn't do that in our view.

23 So there is no record evidence that they followed  
24 their procedure. They used a supplemental thing that says they  
25 may close him down. Every other thing in the ordinance, every

1 other situation in the Miami Beach code, where they are trying  
2 to go after business requires a lawsuit, an administrative  
3 hearing, something. We know why. Because that's due process.  
4 They didn't give him due process.

5 Fundamental rights, the right in this country to start  
6 your own business and operate it consistent with the law, there  
7 are very few fundamental rights more important than that.

8 We have filed a First Amendment retaliation claim  
9 under 1983. First Amendment is the First Amendment. It's the  
10 most fundamental right in some people's views.

11 Mr. Doar's lawyer showed up on Thursday to have a  
12 meeting with the city's attorney office.

13 THE COURT: Your first claim is very, very thin. That  
14 someone had a conversation where they said let's talk about  
15 this and then he gets shut down, that's -- it wasn't like he  
16 was standing in front of the City of Miami Beach screaming that  
17 they were unfair. He was actually in the process of  
18 negotiation.

19 MR. HUDSON: But now that we have learned going  
20 backwards, we knew the system was rigged.

21 THE COURT: Well, I mean that might be true, but  
22 that's not because of the statement he made or his agents made  
23 to the city attorney.

24 MR. HUDSON: We don't know.

25 THE COURT: Well --

1 MR. HUDSON: I would agree with you.

2 THE COURT: If there was a motion to dismiss on, I  
3 would say that's out because there's no plausibility to that.

4 MR. HUDSON: I would agree with you that that's not my  
5 best count, but I am telling you, we are dealing with  
6 fundamental rights, the right to go start a business.

7 This gentleman obviously isn't from the United States  
8 originally. He wanted to start a business. He has a family.  
9 He has a young family. He is trying to do everything he can.

10 We all know you can take judicial notice of all the  
11 articles and the recent referendum and everything else. We  
12 know that this commission or the last commission as of a week  
13 ago wanted these folks gone.

14 So what do we have, Judge, in summation?

15 We have they wanted him gone. They are using the old  
16 what I call anaconda technique. They are making the hour  
17 shorter, making them shorter, making them shorter. Somebody  
18 discovered Ocean 9 didn't have a BTR. That's interesting. So  
19 our view of the story is they did everything they could to get  
20 one of four. Now they got one of four.

21 THE COURT: If they really wanted to do everything  
22 they could, they wouldn't have issued that citation. They  
23 would have just let the clock run out.

24 Why would they put him on notice in June if they are  
25 trying to set the guy up. By the way, you haven't gotten your

1 BTR. They would have never said it. September 30 they would  
2 have said sorry, or October 1.

3 MR. HUDSON: Until I am entitled to get some discovery  
4 and get behind this white rectangular box -- you can never  
5 prove a conspiracy at this stage, ever. That's what happened  
6 here. So all I am asking to you do, Judge, is open him up  
7 temporarily, let him generate business so he can defend himself  
8 and operate his business. There's no harm, no harm to the city  
9 as a result of that. We will see where we are in a year or  
10 two. Otherwise, Judge, this is one of the most unjust cases I  
11 have ever seen in my life.

12 Thank you.

13 THE COURT: What do the defendants say?

14 MR. ARANA: I have rarely been in an argument where  
15 the other side doesn't cite a single case.

16 THE COURT: They cited cases.

17 MR. ARANA: There is not a single case cited for the  
18 proposition that operating a business is a property right  
19 protectable by the Fourteenth Amendment. The reason he can't  
20 cite that is because it's all to the contrary.

21 Again, in our initial brief we cited all of the cases  
22 which say that an expired -- there is no property right in an  
23 expired license. There is a series of cases that we cite.  
24 Vaster v. Citroen. Business owner had no property interest in  
25 an expired liquor license.

1           Lockhart v. Matthew, Third Circuit. Natural  
2 expiration of the license negates any claim that it is a  
3 property interest protected by the due process clause.

4           Lappen v. Costello. When an ordinance provides for  
5 the issuance of a license, a party has no due process right for  
6 a renewal or issuance of the license.

7           THE COURT: Due process right because of the way his  
8 business was closed?

9           MR. ARANA: No, because the issue is, is there a  
10 property interest that is at issue that's being affected. The  
11 interest that they are claiming was first the license, but they  
12 didn't have a license. So they don't have a property interest  
13 to protect. Now they are saying their property interest is the  
14 business. Okay. The operation of the business. It was  
15 improper to shut them down.

16           The 11th Circuit, Baltimore Air Transport v. Jackson,  
17 419 Fed.Appx. 932. No constitutional -- sorry. No  
18 constitutional right is implicated by a complaint that asserts  
19 a property interest in maintaining a business or earning a  
20 profit. Because the complaint fails to state a claim for  
21 procedural due process, the district court properly dismissed  
22 it.

23           So there isn't a property interest at issue that would  
24 give rise to a procedural due process claim to begin with. The  
25 law is crystal clear on that.

1           What about substantive due process? Substantive due  
2 process is clear there is no fundamental right at issue here  
3 that gives rise to a substantive due process claim.

4           I would cite Friedman v. Town of Eatonville. That's a  
5 case where a nightclub was closed down for noise and  
6 disturbances, and the plaintiff brought a procedural due  
7 process and a substantive due process claim. The Eleventh  
8 Circuit in that case affirmed the dismissal of that complaint  
9 on the grounds there was no procedural due process claim  
10 because there was a state law claim for damages.

11           You don't even have to present the procedure that the  
12 city has in place. It's enough if there's a state law remedy  
13 for damages.

14           Here, the city has a procedure for appealing a denial,  
15 which we have talked about, that the plaintiffs have not  
16 pursued. But in any event, they certainly would have a claim  
17 in state court.

18           Now the court goes on to say: "To the extent  
19 plaintiffs assert a violation of substantive due process, we  
20 decline to extend the concept of fundamental constitutional  
21 rights to encompass plaintiff's claims."

22           In other words, running a business is not a property  
23 interest or a fundamental right protected by the federal  
24 constitution.

25           If they have a state law claim, they can pursue a



1 state law claim. This is a state permitting a licensing issue.  
2 That's what we are talking about here. We spent an entire  
3 afternoon in federal court talking about the city's processes  
4 and the plaintiff's efforts to get a new BTR license. We think  
5 the record is clear. The only reason we are here is because  
6 the plaintiff, one, let his license expire without paying for  
7 it; then he was cited for it nine months later, and he still  
8 didn't pay for the license. He could have gone into the city  
9 and paid it that very day. The only thing he had to do was pay  
10 an outstanding fine that was six months old. It was six months  
11 old and he had never appealed it.

12 Then the plaintiff didn't appeal the new violations on  
13 June 25th either. He had a process for doing that. He didn't  
14 do that either. And if at any point he had paid for his BTR  
15 and paid the outstanding fines, they would have given him the  
16 BTR on the spot.

17 THE COURT: But he did eventually appeal the three  
18 violations. He says it was on appeal to the special master.

19 MR. ARANA: What he did, he hired an attorney long  
20 after the time for appeal had run and he contacted the city  
21 attorney's office. The city attorney worked with him, and the  
22 plaintiff, one, admitted the violations and, two, agreed to pay  
23 the thousand dollar fine, which he never paid the BTR during  
24 that entire year. He never tendered a check. He could have  
25 paid it online.

1           Once those violations were resolved -- I think the  
2           reason, if the plaintiff had filed a timely appeal of those  
3           violations, then they probably wouldn't have even shown up as  
4           due on the system.

5           THE COURT: That's what your witness says.

6           MR. ARANA: Since he didn't appeal them through the  
7           process, they were still technically due. He wasn't going to  
8           get his BTR issued until he resolved the outstanding fine.

9           THE COURT: He does that on August 28. His attorney  
10          and the city attorney come to an agreement, you are going to  
11          pay \$1,000 and everything is going to go away. What happens  
12          between August 28 and September 28? Why does it take a month  
13          to have a simple order that says you are going to pay 1,000  
14          bucks and everything is over?

15          MR. ARANA: As I understand it, the special master has  
16          a hearing every week or so in the City of Miami Beach and  
17          addresses these things. This was right in the middle of the  
18          hurricane, is my understanding. There was no hearing on  
19          September 7th or September 14. So it was brought before the  
20          special master on the 28th.

21          THE COURT: What happened on the 21st?

22          MR. ARANA: I don't know if there was a hearing or  
23          not. Maybe they didn't hear these issues on that date. That's  
24          not in the record at this point.

25          But the point is that the plaintiff pursued this

1 process to try and avoid paying those fines. He admitted the  
2 violations, but he had a reduced fine. In any event --

3 THE COURT: Doesn't this seem kind of inequitable?  
4 This fellow didn't pay \$2,000 and he's losing -- I have no idea  
5 what his business is worth, but he's losing a million dollar  
6 business all because he didn't pay \$2,000. It was clear six  
7 days later or two weeks later he was willing to pay after  
8 everything got cleared.

9 The way I see it, he didn't realize, I think, because  
10 it just doesn't make sense if he did realize it. He could have  
11 paid that money to the city and it would have been held in --  
12 the BTR just simply would not have been issued, as I understand  
13 it. It would have existed, but they would not have given him  
14 the piece of paper to hang up in his business. If he had done  
15 that, then he would have been fine.

16 Even if he took care of those fines the next fiscal  
17 year, he would have been fine, according to the testimony of  
18 the fellow from the finance department. Right?

19 MR. ARANA: Yes, your Honor.

20 THE COURT: So the punishment is for that is --  
21 shouldn't the city have some kind of equity and say of course  
22 we know you want to continue to do your business and we are not  
23 going to close you down because of \$2,500. That would be  
24 ridiculous.

25 MR. ARANA: I think the point, your Honor, is that the

1 plaintiff can make these arguments to the city through the  
2 administrative process. He can make this exact case if he  
3 wants to.

4 It's inequitable that he was trying to pay, that he  
5 didn't understand he could have submitted the payment, if  
6 that's what his testimony is. He didn't understand that he  
7 could have tendered the check. He could make all those  
8 arguments through the city process. He hasn't done that.

9 So now we are in federal court, and the question is  
10 does he have a likelihood of success on a federal claim. He  
11 doesn't because he has no federally protected property interest  
12 at stake. There is no substantive due process claim. There is  
13 no procedural due process claim. There is no claim that the  
14 ordinance that says you can be prevented from operating if you  
15 don't have a BTR license is vague.

16 You are not supposed to operate without a license.  
17 Everybody knows that. It's clear. The ordinance says that.

18 So our view of it is that, frankly, the plaintiff  
19 didn't pay for his license for more than a year. But if he has  
20 some argument, if he has an argument that, look, I should be  
21 allowed to be grandfathered in or I should be allowed to get it  
22 at this point because of everything that happened, that's an  
23 argument he needs to take up through the adequate state court  
24 system. Otherwise, can you imagine the number of cases that  
25 you would be inundated with if every time somebody got was

1 involved in a state court permitting system and didn't like the  
2 outcome --

3 THE COURT: What makes this a little different is that  
4 his business is closed. If you said, okay, take this up on the  
5 city and keep running your business, but know when you lose  
6 this thing we are going to close you down if the city doesn't  
7 give you some relief through the special master or whoever you  
8 appeal to.

9 MR. ARANA: And I can understand that point, but the  
10 question is whether he is in the right forum. We don't --

11 THE COURT: Your main argument then is the forum  
12 argument, not the facts.

13 MR. ARANA: No, I think --

14 THE COURT: Other than the facts, the facts relate to  
15 the forum.

16 MR. ARANA: Well, we have heard the facts today. I  
17 think the city's process is clear and it was fair. All he had  
18 to do was either renew his license timely or pay it any time  
19 during the year and he would have had it.

20 If he thinks that he should be entitled to a new BTR,  
21 he should apply for one. I think the facts show that the city  
22 didn't do anything wrong and that the process is fair and that  
23 he just needs to follow through with it.

24 But in addition to that, we are in federal court on  
25 federal claims that he doesn't have. So what the court can say

1 is, look, you don't have a likelihood of success on the merits  
2 because you don't have federal claims. In fact, they are going  
3 to be dismissed. Go through the state court procedure, file an  
4 application for a BTR, and if the city says you are not  
5 entitled to one, take that before the city manager and make the  
6 case they are making.

7 That's what they could have done. They could have  
8 done that a month ago. But you can't open the door to federal  
9 court just because it's unfortunate that they're out of  
10 business, and it is.

11 I will note that the case law makes it clear that,  
12 first of all, lost profits is generally not considered  
13 irreparable harm. They have more than one location. If they  
14 were to successfully make a claim down the road, they could  
15 calculate lost profits. So I don't think they even  
16 establish --

17 THE COURT: Does the second location sell liquor too?

18 MR. HUDSON: Beer and wine. Only beer and wine.

19 THE COURT: But the one we are talking about is a true  
20 liquor store.

21 MR. HUDSON: Right, full liquor.

22 MR. ARANA: So I don't think they established  
23 irreparable harm. I think money damages is money damages. If  
24 they are right on this -- I don't think they are -- but if they  
25 are right, they can pursue a claim for money damages.

1           Also the case law is clear that irreparable harm is  
2 not enough to get an injunction alone.

3           We know we are not supposed to be in federal court.  
4 We don't have a claim. We don't even have a case to cite to  
5 suggest we have one. It's really unfortunate for us that we  
6 are closed down. That's not enough.

7           For all those reasons we would ask that the court deny  
8 the motion. Thank you.

9           THE COURT: Briefly, Mr. Hudson.

10          MR. HUDSON: We absolutely believe we have federal  
11 claims. We only had two days to brief this thing. If you need  
12 some more, we are happy to give you more. I am sure these  
13 young folks will be spending some time on it. We absolutely  
14 have federal claims here.

15          There is no state court remedy for us. That's exactly  
16 why we have federal claims. There is no state court remedy.  
17 Because you have seen the internal notes in the system say  
18 don't give this guy the license when he opens up. You call it  
19 futility. Call it whatever you want. If we hadn't filed that  
20 application, it would have taken six months, a year, whatever,  
21 whatever. We are not obligated to do that much.

22          Specifically there is an exception in 1983 cases for  
23 exhausting administrative remedies. We don't have one, as I  
24 think you learned today. We don't have one because they forced  
25 us into a new application. This is not an appeal. This is a

1 new application, which we know from what we have seen today,  
2 the evidence, the uncontroverted evidence, that it's going to  
3 be denied.

4 So that's exactly what a 1983 claim is and that's  
5 exactly why --

6 THE COURT: But there is a process if it's denied for  
7 to you appeal within the city. Even if I take for granted that  
8 it's going to be denied, then you have a process within the  
9 city to appeal that.

10 MR. HUDSON: 1983 says I don't have to do that if I  
11 choose not to. We have chosen not to because we believe that  
12 we will not be around by the time that process is accomplished  
13 because of everything that you heard today. Everything was  
14 different, nothing that you could normally rely upon. They are  
15 asking him to rely on stuff, yet they did everything  
16 differently in this case, your Honor.

17 THE COURT: But I don't see why you say they did  
18 everything differently. I think they did everything by the  
19 book, at least from the testimony I heard.

20 MR. HUDSON: The special master proceeding, there was  
21 nothing by the book. The good news is there was a special  
22 master proceeding because they have waived all those other  
23 arguments and appellate dates and deadlines.

24 THE COURT: I agree the special master was somewhat  
25 unusual. He said it happens occasionally, but that he didn't



1 file the appeal on the back of the ticket or the front of the  
2 ticket but, rather, his lawyer convinced the city attorney to  
3 allow the --

4 MR. HUDSON: Correct, and his lawyers are telling him  
5 we are now in the process, don't worry, we will take care of  
6 it. So he's good to go. Then when they tell him we are good  
7 to go, give me the check, we gave him the check. All of the  
8 sudden we have a month delay. The hurricane, I can't argue  
9 with that, but there is still another day. There's too many  
10 coincidences.

11 THE COURT: Shouldn't he be suing his advisers and his  
12 lawyers? Shouldn't his advisers and lawyers have been saying,  
13 hey, you have got to go down there or we have to go down there  
14 and write a check to \$2,265 and give it to that clerk because  
15 no matter what happens with these things, you are going to be  
16 protected. Your license, you are not going to lose your BTR.

17 MR. HUDSON: I can't comment on that. Harold Rosen  
18 has been on the beach forever. He is a well-known lawyer. I  
19 know Guy Shir as well. I can't speculate. That's speculation,  
20 Judge.

21 I want to address these claims. There is no question  
22 in our view we have procedural due process. There was no due  
23 process here. You were right. I believe you are absolutely  
24 right. What due process did he have before they shut him down  
25 on the 6th. None. Zero.

1 I believe -- Judge, tell me if you want a couple more  
2 cases.

3 THE COURT: I do want cases, yes. I could be wrong,  
4 and I asked the defendant. He said he is relying on both. But  
5 to me it seems like his strongest argument is that you  
6 shouldn't be in federal court. There is no property interest  
7 in the license or in the running of a business.

8 MR. HUDSON: There is no question under the Fourteenth  
9 Amendment, your Honor, we are entitled to be here. There is  
10 concurrent jurisdiction in 1938 cases. We will give you more  
11 case law.

12 THE COURT: When are you going to do that?

13 MR. HUDSON: I will ask you.

14 THE COURT: It's up to you. I know you want to move  
15 quickly.

16 MR. HUDSON: Absolutely.

17 THE COURT: Your problem is that if I don't rule on  
18 this thing, you then have a report and recommendation that goes  
19 to Judge Ungaro. Then you have two weeks to object. So every  
20 day you have to add at least two weeks on to that and then two  
21 weeks to respond. So you are talking about a long period of  
22 time.

23 MR. HUDSON: We were a little heartbroken. I am happy  
24 to meet you, but we were heartbroken when we saw it come in  
25 because we knew it would take us Monday. I will try to get it

1 before Monday.

2 THE COURT: Don't get before Monday because I am not  
3 looking at it before Monday.

4 MR. HUDSON: I thought we were Wednesday. We are  
5 Friday.

6 THE COURT: We are Friday.

7 MR. HUDSON: If I can get it to you sooner, I will.  
8 But Wednesday I will get you more.

9 You want it on federal jurisdiction essentially.

10 THE COURT: Yes.

11 By Wednesday, file something.

12 You folks don't need to, but if you want to respond,  
13 respond by Friday. If it's just a response -- that's right,  
14 Thursday and Friday is Thanksgiving. Next week the court is  
15 closed on Friday. So if you get it to me by Wednesday, there  
16 is no point. If you file it by Sunday night or Monday morning  
17 because the court is closed.

18 MR. HUDSON: Your Honor, do you have the ability to  
19 shorten the briefing time or only Judge Ungaro on the R&R?

20 THE COURT: I can recommend that that be done.

21 MR. HUDSON: Could you recommend that, please.

22 THE COURT: I will consider that, yes.

23 MR. HUDSON: Thank you.

24 THE COURT: Anything else anybody thinks should be  
25 briefed?

1 MR. ARANA: No, your Honor.

2 THE COURT: I don't want 80 pages on this thing.

3 MR. HUDSON: No, I won't have time to do 80. We will  
4 do ten good pages.

5 THE COURT: Thanks, everybody, for your hard work  
6 today. I will try to get something out quickly.

7 Court is in recess.

8 Thank you, all. Have a good Thanksgiving.

9 MR. HUDSON: Thank you for giving us a quick hearing.  
10 We appreciate it.

11 C E R T I F I C A T E

12  
13 I hereby certify that the foregoing is an accurate  
14 transcription of the proceedings in the above-entitled matter.

15  
16  
17 November 22, 2017 /s/ Jill M. Felicetti  
18 Jill M. Felicetti, RPR, CRR, CSR  
19 Official Court Reporter  
20 400 N. Miami Avenue, Suite 08S27  
21 Miami, Florida 33128  
22 jill\_felicetti@flsd.uscourts.gov  
23  
24  
25

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<p><b>BY MR. ARANA:</b> [3] 88/2 95/20 128/6</p> <p><b>BY MR. BYERS:</b> [4] 130/2 133/24 134/6 149/6</p> <p><b>BY MR. HUDSON:</b> [45] 15/1 20/20 23/7 25/10 27/14 27/23 28/21 29/7 33/21 35/8 37/15 39/2 39/19 43/11 43/23 44/9 45/25 102/2 107/2 107/7 110/10 111/15 112/14 112/21 115/23 116/18 117/5 117/21 118/9 118/20 119/22 120/8 125/25 127/12 136/19 136/25 139/4 140/10 144/9 145/2 145/10 145/16 145/20 146/11 147/16</p> <p><b>BY MR. PAPPAS:</b> [21] 47/8 49/9 49/22 51/15 53/17 58/17 59/7 61/6 62/16 63/5 63/19 64/24 66/4 66/19 67/2 67/25 68/8 71/11 77/3 77/11 84/6</p>	<p><b>MR. ARANA: [55]</b> 3/9 9/15 9/23 10/2 10/16 11/16 11/25 12/4 12/17 12/24 13/8 13/12 13/21 13/24 14/3 28/12 35/24 86/23 86/25 87/3 87/6 101/22 109/6 110/1 110/8 112/13 115/16 117/18 117/25 118/16 119/19 121/22 127/8 128/3 129/15 150/14 150/16 150/19 150/22 150/24 151/1 158/13 158/16 159/8 161/18 162/5 162/14 162/21 163/18 163/24 165/8 165/12 165/15 166/21 171/25</p> <p><b>MR. BYERS: [27]</b> 36/14 133/21 135/21 138/14 138/19 138/21 138/24 140/4 140/7 140/9 141/17 142/2 144/7 144/12 145/5 145/13 145/18 145/22 146/5 146/9 146/21 147/14 147/21 149/4 150/7</p>	<p>151/4 151/6</p> <p><b>MR. HUDSON:</b> [101] 3/5 3/13 3/17 3/23 4/21 5/7 5/13 5/18 6/2 7/1 7/18 8/13 14/17 20/11 20/18 24/25 25/4 25/9 27/20 27/22 29/5 33/15 35/7 35/22 36/5 36/13 36/20 36/24 37/4 37/12 38/19 38/22 38/24 39/18 42/18 42/24 43/21 47/2 49/6 58/14 59/4 62/13 63/1 64/15 64/20 65/17 65/22 68/6 71/8 86/16 86/21 87/8 87/18 101/25 107/5 113/2 117/3 117/20 118/5 118/18 120/2 120/5 125/9 125/23 127/9 128/2 139/24 144/15 149/2 150/17 150/25 151/10 151/13 151/16 152/19 153/2 153/5 153/17 156/18 156/23 156/25 157/3 158/2 166/17 166/20 167/9 168/9 168/19 169/3 169/16 170/7</p>
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<b>16/12 16/15 16/18</b>	<b>65/6 65/11 65/13</b>	<b>131/24 131/25 132/2</b>
<b>46/19 46/19 50/16</b>	<b>65/17 66/2 66/23</b>	<b>132/20 133/7 133/12</b>
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<b>139/13 140/20</b>	<b>35/25 38/5 38/11</b>	<b>72/12 75/14 78/7</b>
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