

**CITY OF MIAMI BEACH
BOARD OF ADJUSTMENT**

IN RE: Appeal of Administrative Decision to Board of Adjustment
APPLICANT: Beach Blitz Co., a Florida corporation d/b/a Ocean 9 Liquor
PROPERTY: 865 Collins Avenue, Unit D, Miami Beach, Florida 33139
FILE NO. ZBA18-0062
HEARING DATE: May 4, 2018 Board of Adjustment Meeting

**APPENDIX TO
THE CITY'S RESPONSE IN OPPOSITION TO BEACH BLITZ'S
APPEAL FROM DENIAL OF BTR FOR 865 COLLINS AVENUE, UNIT D**

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City of Miami Beach Planning Department*

March 21, 2018

**Appendix to
The City's Response in Opposition to Beach Blitz's
Appeal from Denial of BTR for 865 Collins Avenue, Unit D**

Exhibit	Document
A	January 19, 2018 Planning Review and BTR screenshots; email from Carlos Markovich dated January 23, 2018
B	Miami Beach Code Sections
C	Affidavit of Manuel Marquez
D	Testimony of Manuel Marquez
E	Magistrate's Report and Recommendation
F	Commission Memorandum and Ordinance dated October 19, 2016
G	Testimony of Hernan Cardeno
H	Affidavit of Hernan Cardeno
I	Ordinance No. 2016-4058
J	Invoice dated June 27, 2017
K	Testimony of Doron Doar
L	Email to Special Master dated September 1, 2017
M	BTR Application dated December 27, 2017
N	Letter of Intent dated February 16, 2018

EXHIBIT A

Planning Review

Workflow Details

Name: BTR/Planning Queue Description: BTR/Planning Queue

Status: Fail Action Priority Order: 0 Sort Order: 0

Received Date: 01/19/2018 Due Date: 01/19/2018 Complete Date: 01/19/2018

☒ Needs Resubmit ☒ Completed ☒ Auto Receive

Item Review Note

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Assigned User	Status	Assigned Date	Due Date	Completed Date	Priority	Not Required	Comments
Williams, Stever	Fail	01/19/2018	02/09/2018	01/19/2018	0	<input type="checkbox"/>	After further review Sect ...

EnerGov

After further review Section 142-544 of the City's Land development Regulations applies to the proposed use.

Sec. 142-544. - Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

OK Cancel

Last changed by Service, EnerGov on Friday, January 19, 2018 5:17 PM

Business Tax Receipt

BTR003568-12-2017

Business Name: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR DBA: OCEAN 9 LIQUOR

License Type: Business License District: CCC Applied Date: 12/27/2017

Classification: BTR Issued By: Issued Date: Enter date

Status: Denied Account Number: Expiration Date: Enter date

Description: Retail Alcoholic Beverage License

License Year: 2018

Parcels (30)

Drag a column header and drop it here to group by that column

Text
custom
Planning
After fu

EnerGov

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OK Cancel

12:30 PM
01:23 PM
17:33 PM

Last changed by Castor, Jeannie on Friday, January 19, 2018 5:18 PM

Markovich, Carlos

From: Markovich, Carlos
Sent: Tuesday, January 23, 2018 9:49 AM
To: 'Doron'
Subject: RE: Urgent!Reference #BTR003568-12-2017

Hi Mr. Doar,

Thank you for reaching out to our office. Per Section 142-544 (link below) the use that you have applied for is prohibited within your zoning district.

https://library.municode.com/fl/miami_beach/codes/code_of_ordinances?nodeId=SPBLADERE_CH142ZODIRE_ARTIIDIR_E_DIV13MXMIUSENDI_S142-544PRUS

I hope that helps clarify any confusion you may have.

Best,

MIAMIBEACH

Carlos A. Markovich

Senior Planner - Planning Department
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305-673-7000 ext. 6539 / Fax: 305-673-7559 / www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

It's easy being Green! Please consider our environment before printing this email.

From: Doron [<mailto:ddoar@bellsouth.net>]
Sent: Monday, January 22, 2018 1:29 PM
To: Markovich, Carlos
Subject: Re: Urgent!Reference #BTR003568-12-2017

Mr markovich

On December 27 2017 I applied for BTR for a Liquor sale store for my company beach blitz co dba Ocean 9 Liquor. Your department- planning and zoning reviewed and investigated my request for 3 weeks and on 1/14/2018 approved my application and

EXHIBIT B

Sec. 102-356. - Construction of article; definitions.

All of the provisions of this article shall be construed liberally on behalf of the city. Words and terms not defined in this section shall be interpreted in accordance with their normal dictionary meaning and customary usage. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advertise, advertising, advertisement and *publish* means all means of conveying to the public, whether by word of mouth, newspaper, magazine, periodical, handbill, written notice, printed display, poster, billboard, radio or television announcement or by any other means, notice of a sale or intention to conduct a sale.

Amusement attraction means any building or structure around, over, or through which persons may move or walk, without the aid of any moving device integral to the building or structure, which building or structure provides amusement, pleasure, thrills or excitement. This term does not include enterprises principally devoted to the exhibition of products of agriculture, industry, education, science, religion or the arts.

Amusement ride means any mechanical device that carries or conveys passengers around, over, or along a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, thrills or excitement.

Antique means an object 50 years of age or older that has a special value due to age or reproduction of the same.

Apartment house means a building with or without resident supervision occupied or intended to be occupied by more than two families living separately with separate cooking facilities in each unit.

Arcade means any place of business that has coin-operated game machines and/or pool tables that, when counted together, exceed five in number.

Auction business means a sole proprietorship, partnership or corporation that maintains a permanent office or branch office in the city and that, in the regular course of business, conducts, arranges, advertises, or promotes auctions or uses or allows the use of its facilities for auctions.

Automobile rental agency means any person who rents, leases or offers to rent or lease five or more motor vehicles within the city within any given year.

Automobile shipper means any person engaged in the business or occupation, as principal, agent, broker, intermediary or otherwise, or holding himself out by advertisement, solicitation or otherwise as being engaged in the business or occupation of receiving and accepting the custody or possession of the automobile of another, under any contract, agreement, understanding or arrangement, which provides for the furnishing, procuring or arranging for the transportation or shipment of such automobile to an agreed point or destination, by driving the same thereto, under its own power or propulsion, in lieu of the transportation or shipment thereof as freight by any auto transportation company or common carrier.

Bed and breakfast inn means an historic structure originally built as a single-family residence, which is owner occupied and operated to provide guest rooms with breakfast and/or dinner included as part of the room rate.

Bottle club means a commercial establishment, operated for a profit, whether or not a profit is actually made, wherein patrons consume alcoholic beverages brought onto the premises and not sold or supplied to the patrons by the establishment, whether the patrons bring in and maintain custody of their own alcoholic beverages or surrender custody to the establishment for dispensing on the premises.

Business means every trade, occupation, profession or other manner of revenue-producing activity regardless of whether a profit is actually made. Business, profession and occupation do not include the customary religious, charitable or educational activities of nonprofit religious, nonprofit charitable and nonprofit educational institutions in this state, which institutions are more particularly defined and limited as follows:

- (1) *Religious institutions* means churches and ecclesiastical or denominational organizations or established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and also means church cemeteries.
- (2) *Educational institutions* means state tax-supported or parochial, church and nonprofit private schools, colleges or universities conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Schools, the Department of Education, or the Florida Council of Independent Schools. Nonprofit libraries, art galleries and museums open to the public are defined as educational institutions and eligible for exemption.

- (3) *Charitable institutions* means only nonprofit corporations operating physical facilities in the state at which are provided charitable services, a reasonable percentage of which are without cost to those unable to pay.

Business tax means the fees charged and the method by which the city grants the privilege of engaging in or managing any business, profession, or occupation within the city's jurisdiction.

City manager or his designee means the city manager or one of his assistants or another employee of the city designated by the city manager to perform a function required by this article; however, that review required by section 102-385 shall not be conducted by the same person who performs functions pursuant to any other section of this article. Alternatively, "designee" for purposes of section 102-385 may also mean an independent hearing officer appointed pursuant to resolution of the city commission to perform the review functions set forth in this resolution or to adjudicate violations of the city's codes.

Closing-out sale means the sale or offer to sell by any person, to the public, of goods in stock, on order or in transit, with a declared advertised purpose that such sale:

- (1) Is anticipatory to the termination, closing, liquidation, discontinuance, conclusion, or abandonment, of the business, or any part thereof, or any line of goods, or any one store of a group of stores in connection with such sale; and it shall include all sales advertised in such manner as to reasonably convey to the public the impression that upon the disposal of the goods advertised or on hand, the business will permanently cease and be discontinued;
- (2) Is anticipatory to the temporary closing or discontinuance of the business due to alterations or remodeling of the premises or relocation;
- (3) Will consist of goods damaged or altered by fire, smoke, water, hurricane, flood, explosion or other means; or
- (4) Will consist of goods derived from a business that has failed, been closed, discontinued or liquidated, or where such advertising indicates a business failure or emergency affecting the seller or any previous holder of the goods to be sold.

Compensation means any money, reward or consideration, tangible or intangible, personal property or real property, or the use of real or personal property, received directly or indirectly or in trust or by other means.

Driver means an individual operating a motor vehicle whether as the vehicle owner or as agent, employee or lessee of the owner.

Electrologist means any person who removes hair from or destroys hair on the human body by the use of an electric needle.

Electrolysis means the practice of removing surplus hair from any part of the human body by the application of electric current to the hair papilla by means of a needle to cause decomposition of hair papilla.

Employment agent or *employment agency* means any person in this city engaged for hire or compensation in the business of furnishing persons seeking employment or changing employment with information or other service, intended to enable such persons to procure employment, or furnishing any person who may be seeking to employ, for compensation, help of any kind, with information intended to enable such person to procure such help.

Escort service means any person in this city engaged for hire or compensation in the business of providing companions.

Ferrous metals means any metals containing significant quantities of iron or steel.

Firearm means any revolver, pistol, rifle, shotgun, machine gun, destructive device or other weapon that expels a projectile by the action of an explosive or air pressure or gas.

Florist means any person regularly engaged in the business of selling at retail flowers, funeral sprays, wreaths, designs or corsages.

Flower stand means any person engaged in the business of selling cut flowers exclusive of any, all and every other type and kind of flowers or plants.

For cause means the failure of a licensee to comply with those conditions, standards or requirements required for the issuance of his business tax receipt, or the violation of any other provision of this article or chapters of this Code incorporated in this article.

Gallery means a business which displays art for viewing and/or for sale regardless of whether a fee is charged for admission.

Guard, watchman, patrol includes any person, who, for consideration, advertises as providing or is engaged in the business of furnishing watchman, guard, patrol, or armored car services or who, for consideration, transports prisoners. This includes any person, who utilizes dogs to perform security services unless otherwise excluded.

Hotel means a building occupied or intended to be occupied generally for transient occupancy.

Janitorial service means any person in this city engaged for hire or compensation to provide cleaning services or persons who will perform these services for others.

Medical clinic means an outpatient facility in which the name of a fictitious entity is prominently featured, which provides for surgical and nonsurgical medical treatment and is not directly associated with a hospital.

Motor scooter means a two-wheeled vehicle with small wheels and a low powered engine.

Motor vehicle or *vehicle* means any motor-propelled vehicle, with the exception of motor scooters, including but not limited to motorbuses, vans and automobiles operating on the streets of the city for compensation.

News depot means a location where newspaper carriers pick up and prepare newspapers for delivery.

Nonferrous metals means metals not containing significant quantities of iron or steel, including but not limited to copper, brass, aluminum, bronze, lead, nickel, zinc, and alloys thereof.

Not-for-profit organization means an organization registered as a corporation not for profit pursuant to F.S. ch. 617, no part of the income or profit of which is distributable to its members, directors or officers.

Parking lot means any business engaged in whole or in part in the parking of motor vehicles for the payment of a fee.

Pawn means either of the following transactions:

- (1) *Loan of money* means a written or oral bailment of personal property as security for an engagement or debt, redeemable on certain terms and with the implied power of sale on default.
- (2)

Buy-sell agreement means any agreement whereby a purchaser agrees to hold property for a specified period of time to allow the seller the exclusive right to repurchase the property. A buy-sell agreement is not a loan of money.

Pawnbroker means any person who is not solely a secondary metals recycler subject to F.S. ch. 538, pt. II, which is regularly engaged in the business of making pawns. The term does not include a financial institution as defined in F.S. § 655.005 or any person who regularly loans money or any other thing of value on stocks, bonds or other securities.

Person means any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular.

Precious metals is as defined in F.S. § 538.03: Any item containing any gold, silver, or platinum, or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts.

Precious metals dealer is as defined in F.S. § 538.03: A secondhand dealer who normally or regularly engages in the business of buying used precious metals for resale. The term does not include those persons involved in the bulk sale of precious metals from one secondhand or precious metals dealer to another.

Prearranged travel or tourist-related services means any service, including but not limited to car rentals, lodging, transfers, and sightseeing tours, for which a traveler receives a premium or for which he contracts or pays prior to departure.

Preowned merchandise means personal property previously owned or used, including secondhand goods.

Private investigative agency includes any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations as defined in F.S. § 493.6101(17).

Professional corporation means a corporation organized for the sole and specific purpose of rendering professional service and has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation.

Professional service means any type of personal service to the public that requires as a condition precedent to the rendering of such service the obtaining of a business tax receipt or other authorization from the state. By way of example and without limiting the generality thereof, the personal services which come within the provisions of this article are the personal services rendered by certified public accountants, public accountants, chiropractors, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, architects, veterinarians, attorneys at law, and life insurance agents.

Promoter means any person who promotes a dance or entertainment event on the premises of a business that is licensed to serve alcoholic beverages. To promote a dance or entertainment event is to be involved in one or more of the following activities: (a) hiring any of the persons staffing the event (e.g., deejay, host, cashier, doorman, etc.); (b) hiring any of the persons distributing or mailing invitations, flyers, posters, or other marketing materials in connection with such event; or (c) making the ultimate decision concerning the cost of entrance to the event. A promoter does not include (a) a business, or any full-time employee of the business, that promotes a dance or entertainment event on premises for which the business holds a valid city business tax receipt; (b) a 501(c) corporation, unless it is permitting the use of its temporary alcoholic beverage license by another business on the premises of such other business; (c) a person who holds or promotes a private reception not open to the general public; (d) a person who is hired by a Promoter to host, plan or market a dance or entertainment event; or (e) a person who sponsors, or allows his name to be used in connection with, a dance or entertainment event, provided such Person does not also Promote the event.

Public food service establishment means any building, vehicle, place or structure, or any room or division in a building, vehicle, place or structure, that is maintained and operated as a place where food is regularly prepared, served or sold.

Purchase transaction means a transaction in which a recycler gives consideration having a value in excess of \$10.00 in exchange for regulated metals property.

Receipt means the document that is issued by the city which bears the words "Local Business Tax Receipt" and evidences that the person in whose name the document is issued has complied with the provisions of this article relating to business tax.

Receptive tour operator means any person who prearranges tourist-related or tour guide services for individuals or groups visiting the city whose point of origin or departure is a foreign country. This does not include any person who provides services limited solely to any single one of the following: transportation, lodging, food or entertainment.

Recyclers means all persons engaged in the business or gathering or obtaining of ferrous or nonferrous metals, paper, glass or plastic products that have served their original economic purpose, or is in the business of performing the manufacturing process by which these products are converted into raw products consisting of prepared grades and having an existing or potential economic value; by methods including without limitation, processing, sorting, cutting, classifying, clearing, bailing, wrapping, shredding, shearing or changing the physical form or chemical content thereof.

Regulated metals property means any item composed primarily of any nonferrous metals, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers.

Restaurant means the same as "public food establishment."

Retail establishment means any store, merchant or organization selling merchandise to the general public.

Sale includes all transfers, assignments, pledges, leases, loans, barter or gifts.

Secondhand dealer is as defined in F.S. § 538.03: Any person, corporation, or other business organization or entity which is not a secondary metals recycler subject to part II and which is engaged in the business of purchasing, consigning, or trading secondhand goods.

Secondhand goods is as defined in F.S. § 538.03: Personal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or traded as used property. Such secondhand goods do not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, cardio and strength training or

conditioning equipment designed primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number. For purposes of this paragraph, "secondhand sports equipment" does not include golf clubs.

Seller of travel, travel bureau means any person maintaining a business location or branch office within the city who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel or tourist-related services for individuals or groups through vacation or tour packages or through lodging or travel certificates in exchange for a fee, commission or other valuable consideration. This includes offering membership in a travel club or travel services for an advance fee or payment, even if no travel contracts or certificates or vacation or tour packages are sold.

Talent agency means any person engaged in the occupation of operating an agency, bureau, office or other place for the purpose of procuring or attempting to procure engagements, or for the purpose of giving information as to where such engagements may be provided, for an artist who seeks employment by a buyer in, but not limited to, the following: a live or motion picture production, whether made on or by film, electronic tape, or other electronic device used to produce theatrical motion pictures, television entertainment motion pictures, industrial motion pictures, or television commercials; modeling services; conventions; print media; the legitimate stage; radio; circus; vaudeville; musical arts; or a musical organization.

Taxee means any person operating under a business tax receipt granted pursuant to this article.

Window cleaning service means any person engaged for hire or compensation to provide window cleaning services or persons who will perform these services for others.

(Ord. No. 95-2995, § 2(20), 6-7-95; Ord. No. 99-3173, § 1, 3-3-99; Ord. No. 99-3191, § 1, 7-3-99; Ord. No. 2007-3553, § 1, 4-11-07; Ord. No. 2013-3791, § 3, 2-6-13; Ord. No. 2017-4105, § 2, 6-7-17)

Cross reference— Definitions generally, § 1-2.

Sec. 102-360. - Business tax receipt duration and expiration date.

Each business tax receipt shall be valid for one year. Tax receipts shall be issued beginning October 1 of each year and shall expire on September 30 of the following year. Notwithstanding the foregoing, or any other section in this chapter to the contrary, tax receipts for promoters may be issued for a single dance or entertainment event.

(Ord. No. 95-2995, § 2(20-3 A.), 6-7-95; Ord. No. 99-3173, § 2, 3-3-99; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 118-390. - Purpose/applicability.

- (a) Nothing contained in this article shall be deemed or construed to prohibit the continuation of a legally established nonconforming use, structure, or occupancy, as those terms are defined in section 114-1. The intent of this section is to encourage nonconformities to ultimately be brought into compliance with current regulations. This section shall govern in the event of conflicts with other regulations of this Code pertaining to legally established nonconforming uses, structures, and occupancies.
- (b) The term "nonconformity" shall refer to a use, building, or lot that does not comply with the regulations of this article. Only legally established nonconformities shall have rights under this section.
- (c) For purposes of this section, the term "expansion" shall mean an, addition, enlargement, extension, or modification to a structure that results in an increase in the square footage of the structure, an increase in the occupant content or an increase in the number of seats.
- (d) For the purpose of this section, "legally established" shall apply to the following circumstances:
 - (1) A lot that does not meet the lot frontage, lot width, lot depth, and/or lot area requirements of the current zoning district, provided that such lot met the regulations in effect at the time of platting.
 - (2) A site or improvement that is rendered nonconforming through the lawful use of eminent domain, an order of a court of competent jurisdiction, or the voluntary dedication of property.
 - (3) An existing use which conformed to the code at the time it was established.
 - (4) A building, use and/or site improvement that had received final approval through a public hearing pursuant to this chapter; or through administrative site plan review and had a valid building permit.
 - (5) There shall be no variance of the nonconforming use(s) section of this article IX.

(Ord. No. 2017-4076, § 1, 3-1-17)

Sec. 118-394. - Discontinuance of nonconforming uses.

- (a)

A nonconforming use may not be enlarged, extended, intensified, or changed, except for a change to a use permitted in the district in which the property is located.

- (b) If there is an intentional and voluntary abandonment of a nonconforming use for a period of more than 183 consecutive days, or if a nonconforming use is changed to a conforming use, said use shall lose its nonconforming status. Thereafter, subsequent occupancy and use of the land, building, and/or structure shall conform to the regulations of the districts in which the property is located and any structural alterations necessary to make the structure or building conform to the regulations of the district in which the property is located shall be required. An intentional and voluntary abandonment of use includes, but is not limited to, vacancy of the building or structure in which the nonconforming use was conducted, or discontinuance of the activities consistent with or required for the operation of such nonconforming use.
- (c) The planning director or designee shall evaluate the evidence of an intentional and voluntary abandonment of a nonconforming use and determine the status of the nonconforming use. In order for a nonconforming use to retain a nonconforming status, the evidence, collectively, shall at a minimum demonstrate at least one of the following:
 - (1) Continual operation of the use;
 - (2) Continual possession of any necessary and valid state and local permits, building permits, licenses, or active/pending application(s) for approval related to prolonging the existence of the use.
- (d) Evidence of an intentional and voluntary abandonment of a nonconforming use may include, but shall not be limited to:
 - (1) Public records, including those available through applicable City of Miami Beach, Miami-Dade County, and State of Florida agencies;
 - (2) Utility records, including water/sewer accounts, solid waste accounts, and electrical service accounts;
 - (3) Property records, including executed lease or sales contracts.

(Ord. No. 89-2665, § 13-4, eff. 10-1-89; Ord. No. 2017-4076, § 1, 3-1-17)

Sec. 118-397. - Existence of a nonconforming building or use.

- (a) The planning and zoning director shall make a determination as to the existence of a nonconforming use or building and in so doing may make use of affidavits and investigation in addition to the data presented on the city's building card, occupational license or any other official record of the city.
- (b) The question as to whether a nonconforming use or building exists shall be a question of fact and in case of doubt or challenge raised to the determination made by the planning and zoning director, the question shall be decided by appeal to the board of adjustment pursuant to the requirements of section 118-9. In making the determination the board may require certain improvements that are necessary to insure that the nonconforming use or building will not have a negative impact on the neighborhood.

(Ord. No. 89-2665, § 13-7, eff. 10-1-89; Ord. No. 2005-3493, § 1, 9-8-05; Ord. No. 2015-3977, § 16, eff. 12-19-15)

Sec. 142-544. - Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are accessory outdoor bar counters, except as provided in this chapter; package stores; and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

(Ord. No. 89-2665, § 6-16(A)(5), eff. 10-1-89; Ord. No. 2016-4047, § 2, 10-19-16)

EXHIBIT C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 1:17-cv-23958-UU

BEACH BLITZ CO., a Florida
corporation d/b/a OCEAN 9 LIQUOR,
and d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,
a municipal corporation of the State of Florida,
PHILIP LEVINE, an individual,
JIMMY MORALES, an individual,
MICKEY STEINBERG, an individual,
RICKY ARRIOLA, an individual,
MICHAEL GREICO, an individual,
JOY MALAKOFF, an individual,
KRISTEN ROSEN GONZALEZ, an individual,
JOHN ELIZABETH ALEMAN, an individual,
RAUL J. AGUILA, an individual, and
ALEKSANDR BOKSNER, an individual,

Defendants.

_____ /

AFFIDAVIT OF MANUEL MARQUEZ

STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared Manuel Marquez, who
after being duly sworn, states:

1. My name is Manuel Marquez and I am over the age of 21 and am competent to
testify to the matters set forth in this Affidavit, which are based upon my personal knowledge,

including my knowledge of the business records of the City of Miami Beach, Florida (the “City”).

2. I currently serve as the Assistant Director of Finance of the City of Miami Beach, and have held that position since 2011.

3. A Business Tax Receipt (“BTR license”) is akin to an occupational license, and is required for any business engaging in the privilege of operating a business in the City of Miami Beach. An application for a BTR license is reviewed by numerous City Departments to protect the public interest, including Planning and Zoning, Concurrency, Building, Fire, Police, Risk Management, Public Works, Finance, and Code.

4. Beach Blitz Co. (“Beach Blitz”) has owned and operated a package liquor store in the City’s Mixed Use Environment District (“MXE”) at 865 Collins Avenue, Miami Beach, Florida since approximately 2012.

5. Beach Blitz first applied for and obtained a BTR license for a liquor store for the 2011-2012 fiscal year. *See* Exhibit 1 hereto. Beach Blitz renewed its BTR license for the 2012-2013, 2013-2014, and 2014-2015 fiscal years. *See, e.g.*, Exhibit 2 hereto.

6. Effective October 1, 2015, Beach Blitz applied for and renewed its BTR license for the 2015-2016 fiscal year. *See* Exhibit 3 hereto.

7. On or about July 1, 2016, in the ordinary course of business, the City mailed Beach Blitz a renewal notice, reminding the company to renew the BTR license for the 2016-2017 fiscal year. *See* Exhibit 4 hereto. Beach Blitz did not pay its renewal fee by September 30, 2016.

8. The BTR license expired on September 30, 2016. Thus, Beach Blitz was operating its liquor store illegally as of October 1, 2016. *See* Exhibit 3 hereto.¹

9. At no time during the 2016-2017 fiscal year, from October 1, 2016 through September 30, 2017, did Beach Blitz submit payment to the City to renew its BTR license. At no time during the 2016-2017 fiscal year did the City refuse payment from Beach Blitz to renew its BTR license.

10. On or about October 1, 2017, one year after the expiration of Beach Blitz's BTR license, the status of the BTR license changed from "expired" to "closed." *See* Exhibit 5 hereto. Once a business entity's license status is "closed," the business must submit a new BTR license application pursuant to Section 102-371 of the City Code in order for the City to act on a request for a BTR license.

11. To date, Beach Blitz has not submitted any application for a new BTR license, nor has any application for a BTR license been denied by the City. If any application for a new BTR license had been submitted and denied, the person who submitted the application could have appealed the denial pursuant to Section 102-372 of the City Code.

12. On or about October 4, 2017, Beach Blitz paid a \$1,000 fine pursuant to a consent agreement with the City to resolve three outstanding notices of violation. There is no record that the City ever refused payment of the \$1,000 settlement payment prior to October 4, 2017. There is no record that Beach Blitz submitted any payment for a new BTR license along with its \$1,000 settlement payment.

13. On October 11, 2017, over one year after Beach Blitz's 2016-2017 BTR license expired, Beach Blitz submitted payment to the City for a BTR license. *See* Exhibit 6 hereto.

¹ Beach Blitz owns and operates a second package liquor store at 1100 Collins Avenue for which it maintains an active BTR license.

Because Beach Blitz's license status was "closed" at the time the payment was made, a new BTR license application would need to be submitted pursuant to Section 102-371 of the City Code in order for the City to act on a request for a BTR license.

FURTHER AFFIANT SAYETH NAUGHT.

Manuel Marquez
MANUEL MARQUEZ

Sworn to and subscribed before me this 13th
day of November, 2017.

Guadalupe C Ramos
Notary Public
My commission expires: 9.8.2020

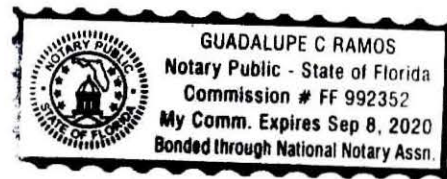


EXHIBIT 1

CITY OF MIAMI BEACH
CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive
 Miami Beach, Florida 33139-1819

TRADE NAME: BEACH BLITZ CO.
 IN CARE OF: DORAN DOAR
 ADDRESS: 13441 NW 5 CT
 PLANTATION, FL 33325

RECEIPT NUMBER: RL-10005692
 Beginning: 10/01/2011
 Expires: 09/30/2012
 Parcel No: 0242032580040

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A certificate of Use / Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Receipt are obtained prior to the opening of the new location.

Additional Information

Storage Locations

TRADE ADDRESS: 865 COLLINS AVE, D

Code 007701 btrapp	Certificate of Use/Occupation LIQUOR SALES BUSINESS TAX RECEIPT APPLICATION FEE
--------------------------	---

CERTIFICATE OF USE	300
SQUARE FOOTAGE	1800
PRORATION	quart
C_U # OF UNITS	1800
LIQUOR INVENTORY	\$ 15000

FROM: CITY OF MIAMI BEACH
 1700 CONVENTION CENTER DRIVE
 MIAMI BEACH, FL 33139-1819

PRESORTED
 FIRST CLASS
 U.S. POSTAGE
 PAID
 MIAMI BEACH, FL
 PERMIT No 1525

BEACH BLITZ CO.
 865 COLLINS AVE, D
 MIAMI BEACH, FL 33139-5807



New Business Tax Account #	Activity # 64053	Amount of Fee Due: \$45.00	Application Fee
Last City License # for This Address	PL-05000956	Make Check Payable to: CITY OF MIAMI BEACH	

City of Miami Beach
Certificate of Use (CU), Annual Fire Inspection Fee & Business Tax Application

This application is NOT your business tax receipt. Do not operate the business until the Certificate of Use and the Business Tax Receipt are issued.
The place of business must be available to all inspectors.

Type of Application:
☐ New Business ☐ Change of Owner ☐ Adding Seats ☐ Additional Occupation
☐ Change of Location

Application Checklist
☐ Federal ID No. ☐ Fictitious Name Registration ☐ Lease/Deed/Closing Statement
☐ Articles of Inc. (if applicable) ☐ State License (if applicable) ☐ CU and Annual Fire Fee (non refundable)
☐ Bill of Sale ☐ Insurance

Does the Application involve: ☐ Change of Use ☐ Renovation (Provide Certificate of Occupancy Process Number _____)

A Change of Use may generate additional building and fire code requirements as applied to new construction.

A valid Certificate of Occupancy is required before an occupational license can be issued.

Is the Business one or more of the following types:

<input type="checkbox"/> Apartment Building	<input type="checkbox"/> Condominium	<input type="checkbox"/> Hotel	<input type="checkbox"/> Restaurant	<input type="checkbox"/> Bakery
<input type="checkbox"/> Ice Cream Parlor	<input type="checkbox"/> Delicatessen	<input type="checkbox"/> Nightclub	<input type="checkbox"/> Dancing/Entertainment	<input type="checkbox"/> Real Estate
<input type="checkbox"/> Hair Salon	<input type="checkbox"/> Home Based Business	<input type="checkbox"/> Health club	<input type="checkbox"/> Promoter	<input type="checkbox"/> Valet
<input type="checkbox"/> Escort Service	<input type="checkbox"/> Janitorial Service	<input type="checkbox"/> Mail Order	<input type="checkbox"/> Pre-Package Food	<input type="checkbox"/> Motor Scooter
<input type="checkbox"/> Retail Alcohol Sales	<input type="checkbox"/> Travel (sales)	<input type="checkbox"/> Mobile Caterer	<input type="checkbox"/> Alcoholic Beverage Establishment	
<input type="checkbox"/> Beach Front Concession	<input type="checkbox"/> Machine Distributor			

Is the Business one of the following types:

<input type="checkbox"/> Adult Congr Liv Facility	<input type="checkbox"/> Day Care	<input type="checkbox"/> Nursing Home	<input type="checkbox"/> Religious Institution	<input type="checkbox"/> School
<input type="checkbox"/> Parking Lot / Garage	<input type="checkbox"/> Outdoor Entertainment	<input type="checkbox"/> Open Air Entertainment	<input type="checkbox"/> Pawnshop	<input type="checkbox"/> Warehouse
<input type="checkbox"/> Video Game Arcade	<input type="checkbox"/> Gasoline Sales	<input type="checkbox"/> Restaurant	<input type="checkbox"/> Alcoholic Beverage Establishment	

Business Name Beach Blitz Application Date: 6/14/12
 Location 865 Collins Avenue #D Lease ☒ Own ☐
 Type of Business (be very specific) Liquor Package Sales only Hours of Operation _____
 Hours Serving Alcohol N/A

Name of Owner / President DORON DOAR Date of Birth _____ DL# B600-160-61-461-0
 Federal ID # _____ SSN 590-58-5883
 Home Address 13441 NW 5CT City Plantati State FL Zip 33325
 Home Phone 954-709-2555 Business Phone _____ Cell Phone _____
 Email Address DDOAR@bellsouth.net Fax No. _____

Send Business Mail to Attention of: DORON DOAR Business Phone 305-672-8030
 Address 865 Collins #D City MB State FL Zip 33139
 Name of Emergency Contact Steve Poljanec Phone 305-788-7177

Is the Business a:

Hotel or Apartment? If yes, how many units? _____ # of washers/dryers (If owned) _____

Restaurant? How many seats inside? _____ How many seats outside? (private property only) _____
 If there will be seats outside on public property (sidewalk), then a Sidewalk Café Permit is required.
 Hours of Alcohol Sales _____ (Zoning Review for # of chairs)

Office or Retail Establishment? If yes, approximate sq. ft. 1800
 If Retail, what is the inventory value? General \$ _____ Food \$ _____ Liquor \$ 15000

Hair or Nail Salon? If yes, number of seats _____

Motor Scooter Rentals? If yes, number of scooters _____

A Miami-Dade County Business Tax Receipt is also required. See "Miami Dade County Business Tax for more information."

Contact the Planning Department for a Sign Permit which is required for all signage.

Any person who, in applying for a business license in the City of Miami Beach, who shall make a false statement and/or fail to disclose and/or misrepresent the information requested shall be subject to penalties authorized by City Code Section 102-375.

I UNDERSTAND THAT IT IS MY RESPONSIBILITY TO FOLLOW-UP ON THE APPROVAL PROCESS FOR THIS APPLICATION.

To follow-up on the status of approval, please contact Ricardo Arnau (305) 673-7000 x6951.

I HAVE READ THIS APPLICATION AND I DO FREELY AND VOLUNTARILY CONFIRM THAT THE STATEMENTS AND INFORMATION CONTAINED THEREIN ARE TRUE AND CORRECT.

Doran Doar
 Print Name

[Signature]
 Signature DORAN DOAR

6-15-12
 Date

Official Use Only: Review by the following Departments may be required:

Planning & Zoning	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Concurrency	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Building	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Fire	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Parking	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Risk Management	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Public Works	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Finance	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Code	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____

Notes/Comments _____

EXHIBIT 2

CITY OF MIAMI BEACH
CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive
 Miami Beach, Florida 33139-1819

TRADE NAME: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR
 IN CARE OF:
 ADDRESS:

RECEIPT NUMBER: RL-10005692
 Beginning: 10/01/2014
 Expires: 09/30/2015
 Parcel No: 0242032580040

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A certificate of Use / Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Receipt are obtained prior to the opening of the new location.

Additional Information

Storage Locations

TRADE ADDRESS: 865 COLLINS AVE, D

Code	Certificate of Use/Occupation
007701	LIQUOR SALES
240029	ENTERTAINMENT ESTABLISHMENT W/O DANCING

CERTIFICATE OF USE	300
SQUARE FOOTAGE	1800
C_U # OF UNITS	1800
LIQUOR INVENTORY	\$ 15000
DANCE_ENT W_O ALCOH	Y

FROM: CITY OF MIAMI BEACH
 1700 CONVENTION CENTER DRIVE
 MIAMI BEACH, FL 33139-1819

PRESORTED
 FIRST CLASS
 U.S. POSTAGE
 PAID
 MIAMI BEACH, FL
 PERMIT No 1525

BEACH BLITZ CO.
 865 COLLINS AVE, D
 MIAMI BEACH, FL 33139-5807



EXHIBIT 3

CITY OF MIAMI BEACH
CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive
 Miami Beach, Florida 33139-1819

TRADE NAME: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR
 IN CARE OF: DORAN DOAR
 ADDRESS: 13441 NW 5 CT
 PLANTATION, FL 33325

RECEIPT NUMBER: RL-10005692
 Beginning: 10/01/2015
 Expires: 09/30/2016
 Parcel No: 0242032580040

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A certificate of Use / Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Receipt are obtained prior to the opening of the new location.

Additional Information

Storage Locations

TRADE ADDRESS: 865 COLLINS AVE, D

Code	Certificate of Use/Occupation
003602	AUTO TELLER MACHINES
007700	FOOD SALES
007701	LIQUOR SALES
012065	MERCHANTS SALES
240029	ENTERTAINMENT ESTABLISHMENT W/O DANCING

CERTIFICATE OF USE	300
SQUARE FOOTAGE	1800
RETAIL INVENTORY	\$ 15000
C_U # OF UNITS	1800
FOOD INVENTORY	\$ 500
LIQUOR INVENTORY	\$ 1000
# OF AUTOTELLER MACH	1
DANCE_ENT W_O ALCOH	Y

FROM: CITY OF MIAMI BEACH
 1700 CONVENTION CENTER DRIVE
 MIAMI BEACH, FL 33139-1819

PRESORTED
 FIRST CLASS
 U.S. POSTAGE
 PAID
 MIAMI BEACH, FL
 PERMIT No 1525

BEACH BLITZ CO.
 865 COLLINS AVE, D
 MIAMI BEACH, FL 33139-5807



New Business Tax Account # <u>00091184</u>	Amount of Fee Due: \$ <u>\$45.00 Application Fee</u>
Last City License # for This Address <u>linked to RL-10005693</u>	Make Check Payable to: CITY OF MIAMI BEACH

City of Miami Beach
Certificate of Use (CU), Annual Fire Inspection Fee & Business Tax Application

This application is NOT your business tax receipt. Do not operate the business until the Certificate of Use and the Business Tax Receipt are issued.
 The place of business must be available to all inspectors.

Type of Application:
☐ New Business ☐ Change of Owner ☐ Adding Seats ☒ Additional Occupation
☐ Change of Location

Application Checklist
☒ Federal ID No. ☐ Fictitious Name Registration ☐ Lease/Deed/Closing Statement
☒ Articles of Inc. (if applicable) ☐ State License (if applicable) ☐ CU and Annual Fire Fee (non refundable)
☐ Bill of Sale ☐ Insurance

Does the Application involve: ☐ Change of Use ☐ Renovation (Provide Certificate of Occupancy Process Number _____)

A Change of Use may generate additional building and fire code requirements as applied to new construction.

A valid Certificate of Occupancy is required before an occupational license can be issued.

Is the Business one or more of the following types:

<input type="checkbox"/> Apartment Building	<input type="checkbox"/> Condominium	<input type="checkbox"/> Hotel	<input type="checkbox"/> Restaurant	<input type="checkbox"/> Bakery
<input type="checkbox"/> Ice Cream Parlor	<input type="checkbox"/> Delicatessen	<input type="checkbox"/> Nightclub	<input type="checkbox"/> Dancing/Entertainment	<input type="checkbox"/> Real Estate
<input type="checkbox"/> Hair Salon	<input type="checkbox"/> Home Based Business	<input type="checkbox"/> Health club	<input type="checkbox"/> Promoter	<input type="checkbox"/> Valet
<input type="checkbox"/> Escort Service	<input type="checkbox"/> Janitorial Service	<input type="checkbox"/> Mail Order	<input checked="" type="checkbox"/> Pre-Package Food	<input type="checkbox"/> Motor Scooter
<input type="checkbox"/> Retail Alcohol Sales	<input type="checkbox"/> Travel (sales)	<input type="checkbox"/> Mobile Caterer	<input type="checkbox"/> Alcoholic Beverage Establishment	<input checked="" type="checkbox"/> ATM
<input type="checkbox"/> Beach Front Concession	<input type="checkbox"/> Machine Distributor		<input checked="" type="checkbox"/> Adding	<input checked="" type="checkbox"/> Retail sales

Is the Business one of the following types:

<input type="checkbox"/> Adult Congr Liv Facility	<input type="checkbox"/> Day Care	<input type="checkbox"/> Nursing Home	<input type="checkbox"/> Religious Institution	<input type="checkbox"/> School
<input type="checkbox"/> Parking Lot / Garage	<input type="checkbox"/> Outdoor Entertainment	<input type="checkbox"/> Open Air Entertainment	<input type="checkbox"/> Pawnshop	<input type="checkbox"/> Warehouse
<input type="checkbox"/> Video Game Arcade	<input type="checkbox"/> Gasoline Sales	<input type="checkbox"/> Restaurant	<input type="checkbox"/> Alcoholic Beverage Establishment	

Additional Service - Adding Categories

Business Name Beach Blitz Co d/b/a Ocean 9 Liquor Application Date: _____
 Location 865 Collins Avenue, D Miami Beach, FL Lease _____ Own _____
 Type of Business (be very specific) Adding: retail sales ① 3339 Hours of Operation _____
food sales ②
Atm ③
 Hours Serving Alcohol _____

Name of Owner / President Doron Doar Date of Birth 12/61 DOB # 060016061461-0 St. FL
 Federal ID # 020639801 SSN _____
 Home Address 13441 NW 5 court City Plantation State FL Zip 33325
 Home Phone N/A Business Phone 305-397-8600 Cell Phone 954-709-2555
 Email Address _____

Send Business Mail to Attention of: Doron Doar Business Phone 305-397-8600
 Address 13441 N.W. 5th Court City Plantation State FLA. Zip 33325
 Name of Emergency Contact Rochelle Malek Phone 305-823-8855

Is the Business a:

Hotel or Apartment? If yes, how many units? _____ # of washers/dryers (if owned) _____

Restaurant? How many seats inside? _____ How many seats outside? (private property only) _____
 If there will be seats outside on public property (sidewalk), then a Sidewalk Café Permit is required.
 Hours of Alcohol Sales _____ (Zoning Review for # of chairs)

Office or Retail Establishment? If yes, approximate sq. ft. _____
 If Retail, what is the inventory value? General \$ 75,000.00 Food \$ 20,000.00 Liquor \$ _____

Hair or Nail Salon? If yes, number of seats _____

Motor Scooter Rentals? If yes, number of scooters _____

A Miami-Dade County Business Tax Receipt is also required. See "Miami Dade County Business Tax for more information."

Contact the Planning Department for a Sign Permit which is required for all signage.

Any person who, in applying for a business license in the City of Miami Beach, who shall make a false statement and/or fail to disclose and/or misrepresent the information requested shall be subject to penalties authorized by City Code Section 102-375.

I UNDERSTAND THAT IT IS MY RESPONSIBILITY TO FOLLOW-UP ON THE APPROVAL PROCESS FOR THIS APPLICATION TO FOLLOW-UP PLEASE CONTACT, HOWARD RAMIREZ (305) 673-7000 (ext. 6117) or E-mail: HowardRamirez@miamibeachfl.gov

I HAVE READ THIS APPLICATION AND I DO FREELY AND VOLUNTARILY CONFIRM THAT THE STATEMENTS AND INFORMATION CONTAINED THEREIN ARE TRUE AND CORRECT.

Doron Doan
 Print Name

[Signature]
 Signature

April 28, 2015
 Date

Official Use Only: Review by the following Departments may be required:

Planning & Zoning	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Concurrency	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Building	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Fire	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Parking	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Risk Management	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Public Works	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Finance	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Code	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____

Notes/Comments _____

EXHIBIT 4

INVOICE (00011214)**BILLING CONTACT**

OCEAN 9 LIQUOR
 BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR
 865 Collins Ave, D
 Miami Beach, FL 33139-5807

1700 Convention Center Drive
 Miami Beach, Florida 33139
 305.673.7000

INVOICE NUMBER	INVOICE DATE	INVOICE DUE DATE	INVOICE STATUS	INVOICE DESCRIPTION
00011214	07/01/2016	07/01/2016	Void	Renewal Invoice

REFERENCE NUMBER	FEE NAME	TOTAL
RL-10005692	annfir	\$57.50
	occllc	\$274.00
	occllc	\$274.00
	occllc	\$233.00
	occllc	\$233.00
	occllc	\$604.00
865 Collins Ave D Miami Beach, FL 33139-5807		SUB TOTAL
		\$1,675.50

TOTAL **\$1,675.50**

Any refund associated with this invoice will only be issued to the billing contact listed herein.

EXHIBIT 5

Business License Search

Search Export

Search Criteria

☐ Shared

Note: name is only required if criteria needs to be saved.

Map Results

+ Viewing 5 of 5 results.

Drag a column header and drop it here to group by that column

<input type="checkbox"/>		Company Name	DBA	Business Address	License Status	License Number	License Year
>	<input type="checkbox"/>	BEACH BLITZ CO	BEACH BLITZ CO	1100 COLLINS AVE #APT 7	Active	RL-10001136	2018
	<input type="checkbox"/>	BEACH BLITZ CO	BEACH BLITZ CO	1100 COLLINS AVE #APT 7	Expired	RL-10001136	2016
	<input type="checkbox"/>	BEACH BLITZ CO	BEACH BLITZ CO	1100 COLLINS AVE #APT 7	Expired	RL-10001136	2017
	<input type="checkbox"/>	BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR	OCEAN 9 LIQUOR	865 COLLINS AVE #D	Expired	RL-10005692	2016
	<input type="checkbox"/>	BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR	OCEAN 9 LIQUOR	865 COLLINS AVE #D	Closed	RL-10005692	2017

EXHIBIT 6

865 Collins Ave

TRC-601368-11-10-2017

Billing Contact: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR

Payment Method: Credit Card

Payment Amount: \$2,246.46

Payment Note: WEB-CC Payment(s) #65793.



Transaction Note:



Payment Date: 10/11/2017

Transaction Type: Fee Payment



Transaction Date: 10/11/2017

Office:



Transaction Status: Complete

Batch Number: 20171011



Deposit Reference:



Fee Payments Notes

Total Due: \$0.00

Primary Fees

Total: \$2,246.46

	Amount To Ap	Fee Name	Fee Total	Amount Due	Amount Paid	Invoice #	Entity	Reference Ent	FeePriority
>	\$233.00	Occ. Code 95240	\$233.00	\$0.00	\$233.00	00065793	Business License	RL-10005692	0
	\$274.00	Occ. Code 95007	\$274.00	\$0.00	\$274.00	00065793	Business License	RL-10005692	0
	\$604.00	Occ. Code 95012	\$604.00	\$0.00	\$604.00	00065793	Business License	RL-10005692	0
	\$274.00	Occ. Code 04007	\$274.00	\$0.00	\$274.00	00065793	Business License	RL-10005692	0
	\$570.96	BTR Upcharge - L	\$570.96	\$0.00	\$570.96	00065793	Business License	RL-10005692	0
	\$233.00	Occ. Code 95003	\$233.00	\$0.00	\$233.00	00065793	Business License	RL-10005692	0
	\$57.50	Mercantile Occup	\$57.50	\$0.00	\$57.50	00065793	Business License	RL-10005692	0

EXHIBIT D

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).

Pages 1- 173

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

APPEARANCES:

FOR THE PLAINTIFF(S): PHILLIP M. HUDSON, III, ESQ.
Arnstein & Lehr, LLP
200 South Biscayne Boulevard, Suite 3600
Miami, Florida 33131
(305) 374-3330
pmhudson@arnstein.com

FOR THE DEFENDANT(S): ENRIQUE DANIEL ARANA, ESQ.
Carlton Fields Jorden Burt, P.A.
Miami Tower
100 S.E. Second Street
Suite 4200
Miami, Florida 33131
(305) 530-0050
earana@cfjblaw.com

- and -

SCOTT EVERETT BYERS, ESQ.
GARY PAPPAS, ESQ.

REPORTED BY: Jill M. Felicetti, RPR, CRR, CSR
Official Court Reporter
400 N. Miami Avenue, Suite 08S27
Miami, Florida 33128
jill_felicetti@flsd.uscourts.gov

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 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
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23
24
25

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 17-23958-CIV-UNGARO/O'SULLIVAN

BEACH BLITZ CO., a Florida
corporation d/b/a OCEAN 9 LIQUOR, and
d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,
a municipal corporation of the State of Florida,
PHILIP LEVINE, an individual, JIMMY
MORALES, an individual, MICKEY
STEINBERG, an individual, RICKY ARRIOLA,
an individual, MICHAEL GREICO, an individual,
JOY MALAKOFF, an individual, KRISTEN
ROSEN GONZALEZ, an individual,
JOHN ELIZABETH ALEMAN, an individual,
RAUL J. AGUILA, an individual, and
ALEKSANDR BOKSNER, an individual,

Defendants.

_____ /

REPORT AND RECOMMENDATION

THIS MATTER is before the Court on the Plaintiff's Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17). This matter was referred to the undersigned by the Honorable Ursula Ungaro for a report and recommendation in accordance with 28 U.S.C. § 636(b). See Order of Reference (DE# 23, 11/14/17). Having carefully considered the applicable filings and the law and having held an evidentiary hearing on November 17, 2017, the undersigned respectfully recommends that the Plaintiff's Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17) be **DENIED** for the reasons stated herein.

BACKGROUND

On October 30, 2017, Beach Blitz Co. d/b/a Ocean 9 Liquor and d/b/a as Ocean 11 Market (hereinafter “plaintiff” or “Beach Blitz”) filed the instant action alleging the following causes of action against all defendants: Declaratory Judgment/injunctive Relief (Wrongful Closure) (Count I); violation of 42 U.S.C. §1983 (Count II); violation of the 14th Amendment – substantive due process and takings claim (Count III); violation of 42 U.S.C. §1983 (Retaliation for First Amendment Expression) (Count IV); declaratory judgment/injunctive relief (Section 102-377(e) of the Code) (Count V); declaratory judgment/injunctive relief (The Ordinances) (Count VI) and breach of Fla. Stat. § 562.45 (The Ordinances) (Count VII). See Complaint (DE# 1, 10/30/17).

On November 3, 2017, the plaintiff filed the instant motion. See Plaintiff’s Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17) (hereinafter “Motion”). The defendants filed their response on November 13, 2017. See Defendants’ Response to Plaintiff’s Emergency Motion for Preliminary Injunction (DE# 22, 11/13/17) (hereinafter “Response”). The plaintiff filed its reply on November 15, 2017. See Reply in Support of Plaintiff’s Emergency Motion for Preliminary Injunction [ECF NO. 4] (DE# 25, 11/15/17).

On November 17, 2017, the undersigned held an evidentiary hearing on the instant motion. The plaintiff presented the testimony of Doron Doar, the principal of Beach Blitz. The defendants presented the testimony of Manuel Marquez, the Assistant Director of Finance for the City of Miami Beach and Hernan Cardino, the Director of Code Compliance for the City of Miami Beach. The undersigned admitted into evidence

the Plaintiff's Exhibits 1 through 17 and the Defendants' Exhibits 1 through 18. The undersigned permitted the parties to file supplemental briefs. See Supplemental Memorandum in Support of Plaintiff's Emergency Motion for Preliminary Injunction (DE# 36, 11/22/17) (hereinafter "Plaintiff's Supplemental Memorandum"); Defendants' Response to Plaintiff's Supplemental Memorandum in Support of Its Emergency Motion for Preliminary Injunction (DE# 38, 11/26/17) (hereinafter "Defendants' Supplemental Memorandum"). This matter is ripe for adjudication.

FACTUAL FINDINGS

Ocean 9 Liquors (hereinafter "Ocean 9") is a liquor store operating in the City of Miami Beach (hereinafter "City"). On October 6, 2017, Ocean 9 was closed for failing to timely obtain a Business Tax Receipt.

I. Business Tax Receipts ("BTRs")

All for-profit businesses operating in the City are required to have a Business Tax Receipt (hereinafter "BTR"). A BTR is an occupational license. A business seeking to obtain a BTR must submit an application to the City along with other documentation such as a lease or warranty deed evidencing the location of the business, a state license if needed and articles of incorporation.

The Finance Department receives applications for BTRs involving liquor sales. Upon receipt of an application, the Finance Department electronically routes it to the City's other regulatory departments: the Building Department, the Fire Department, the Planning Department and the Code Compliance Department. These departments weigh in on whether to issue the BTR.

A BTR is valid for one fiscal year, from October 1 through September 30th of the following year. Pursuant to state law, all BTRs expire on September 30th of the fiscal year that they were issued. To renew a BTR, a business needs to pay the annual renewal fee. Every July, the City mails out a reminder notice as a courtesy to businesses. The City's records reflect that a renewal reminder notice was created for Ocean 9 on July 1, 2016. A business may pay the BTR renewal fee at City Hall, at the Customer Service Center, at the City's lockbox, at the City's satellite office in North Miami Beach or online. The online system does not prevent businesses from making an online payment for a BTR even if there are outstanding violations.

It is the City's practice to accept payments for BTRs.¹ In instances where a business has outstanding fines or debts owed to the City, the City will withhold the BTR until the business pays the money owed. Once the debt is paid, the City will release the BTR. If a business has an outstanding code violation and that business presents evidence to the City of a proceeding before the Special Master challenging that code violation, the City will release the BTR. If however, a violation has been issued and the time to appeal that violation has passed, the debt becomes due to the City and the City expects the business to pay the debt owed before releasing the BTR. If a Special Master has adjudicated a business guilty and imposed a fine, that business would need to pay the fine before obtaining a BTR. See Transcript (DE# 39 at 132).

If a fiscal year passes and a BTR is not renewed, that BTR will be placed in

¹ The plaintiff's principal, Dorian Doar, testified that he attempted multiple times to submit payment for Ocean 9's BTR, but each time, the City refused to accept payment.

“closed status.” A closed BTR cannot be renewed. If a business misses the time period for renewing its BTR, that business will need to file a new application to obtain another BTR. If an application for a BTR is denied, the City provides an appeal process through the City Manager or a designee.

II. Ocean 9 Liquors (“Ocean 9”)

Doran Doar is the owner of plaintiff Beach Blitz. Mr. Doar owns two businesses through Beach Blitz: Ocean 9, a liquor store, and Ocean 11 Market (hereinafter “Ocean 11”), a convenience store that sells beer and wine. Ocean 9 has been in business since 2012 and has been very profitable. Tourists make up approximately 85 percent of the customer base of the two stores.

Ocean 9 and Ocean 11 are located in the MXE District in the City of Miami Beach, Florida. Presently, there are only three liquor stores operating in the MXE District. The City has passed several ordinances reducing the hours of operation for liquor stores in the MXE District. The City has also passed an ordinance precluding the opening of any new liquor stores in the MXE District.

On September 30, 2016, the BTR for Ocean 9 expired when it was not renewed. On December 21, 2016, Ocean 9 was cited for selling alcohol outside the permitted hours. See Defendants’ Exhibit 10. The citation imposed a \$1,000 fine. The back of the citation contained a notice stating that fines could be appealed within twenty (20) days of receipt. Id.

On June 25, 2017, the City of Miami Beach Code Compliance Division issued two citations to Ocean 9. See Plaintiff’s Exhibit 5. One of the citations was for selling alcohol outside the permitted business hours. The other citation was for failing to timely

renew a BTR.² Each citation imposed a \$1,000 fine. The back of the citation contained a notice which stated that fines could be appealed within ten (10) days of receipt. At no time did the plaintiff appeal the three violations in the manner proscribed on the back of the citations.

Mr. Doar was overseas when the June 25, 2017 citations were issued. A store clerk advised Mr. Doar of the two citations and Mr. Doar returned to the United States on June 27, 2017. Prior to receiving notice of the citations, Mr. Doar did not realize the BTR for Ocean 9 was expired.

Ordinarily, Mr. Doar would receive courtesy renewal notices in July notifying him that the BTRs would expire on September 30th of that year. Mr. Doar testified that he never received the BTR renewal notice for Ocean 9 on or about July 2016 or anytime thereafter. Mr. Doar did receive a renewal notice for Ocean 11 and he renewed that BTR. Mr. Doar did not recall why he did not renew the Ocean 9 BTR at the same time he renewed the Ocean 11 BTR.

On June 27, 2017, Mr. Doar went to the City's Finance Department and tried to pay for the BTR. Mr. Doar did not recall the exact conversation he had with the employee in the Finance Department. However, he testified that the employee told him that he was not allowed to renew his BTR because he had violations. See Transcript (DE# 36 at 76). Mr. Doar understood, in general, that he needed to resolve the

² The Notice of Violation corresponding to this citation contained the following instruction "Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach." Defendants' Exhibit 12. Ocean 9 did not cease operating at that time.

violations³ in order to pay for his BTR. Id. at 77. The Finance Department employee provided Mr. Doar with an invoice totaling \$2,246.46, which included the BTR fee and late fee. See Defendants' Exhibit 15. If Mr. Doar had paid this amount plus the \$1,000 fine for the outstanding December 21, 2016 violation, he would have received the BTR.⁴

Mr. Doar did not believe the December 21, 2016 violation was merited. He wanted his "professional people" to deal with that violation and the other two outstanding violations.

Mr. Doar then went to the office of a woman named Rochelle Malik. Ms. Malik helps small business owners resolve problems with the City of Miami Beach and had worked with Mr. Doar in the past. Mr. Doar gave the June 25, 2017 citations (Plaintiff's Exhibit 5) to Ms. Malik and told her to appeal them. Mr. Doar also gave Ms. Malik the citation from December 2016 and told her to resolve that citation as well. Mr. Doar specifically instructed Ms. Malik to go to the City and try to get a BTR.

At the same time, Mr. Doar also hired an attorney, Guy Shir, to appeal the citations. Mr. Shir sent a check for \$100 to the Special Master's Office to appeal the citations, but that check was not accepted. It was Mr. Doar's understanding that without

³ At the evidentiary hearing, Mr. Doar referred to "violations" in the plural form. However, he also testified that he did not think the violations he needed to resolve to obtain his BTR included the June 25, 2017 violations because those violations were new.

⁴ The City presented testimony that the June 25, 2017 violations would not have been considered due on June 27, 2017 because the time to appeal those violations had not run. Therefore, the only violation that needed to be paid on June 27, 2017 was the December 21, 2016 violation.

resolving his citations, he could not obtain a BTR.⁵

At the end of July 2017, Mr. Doar hired another attorney, Harold Rosen. Mr. Rosen was successful in obtaining an appeal. However, it was not an ordinary appeal process through the Special Master's office. It was initiated through the City Attorney's office and later, an agreed order was placed before the Special Master for a hearing and ratification.

On August 28, 2017, Mr. Rosen reached an agreement with the City to resolve all three citations for \$1,000. On the same day, Mr. Doar gave Mr. Rosen a check for \$1,000 to pay for the citations. Mr. Rosen told Mr. Doar that he gave the check to Aleksandr Boksner, the Deputy City Attorney, on August 28 or August 29, 2017. The check was deposited by the City on October 18, 2017.

The Special Master did not sign the Agreed Order reflecting the parties agreement to resolve all three citations until September 28, 2017. See Plaintiff's Exhibit 7. The City was shut down for a number of days in September due to Hurricane Irma. Under the terms of the Agreed Order, the plaintiff admitted to the violations being properly issued by the City and the plaintiff was assessed a fine of \$1,000. While the Agreed Order's \$1,000 fine resolved all outstanding debt due to the City, Ocean 9 would still need to pay an additional amount to obtain a BTR.

Mr. Rosen provided Mr. Doar with a copy of the Agreed Order on September 28, 2017. On September 28 or September 29, 2017, Mr. Doar went to the City's offices to

⁵ The City of Miami Beach presented testimony that had Mr. Doar paid for his BTR with the citations still outstanding, the clerk would have accepted payment for the BTR and held onto the BTR until the citations were resolved.

pay the violation and to obtain a BTR. A City employee told Mr. Doar that Mr. Doar would not receive a BTR because there were outstanding violations. Mr. Doar told the employee that the violations had been resolved. The employee responded that Mr. Doar had a violation and he could not renew the BTR. Ms. Malik later explained to Mr. Doar that it probably meant that the City's computer system had not yet been updated.

The following week, on Tuesday, October 3, 2017, Mr. Doar again went to the City's offices to obtain a BTR. He renewed the BTR for Ocean 11. See Plaintiff's Exhibits 9 and 10.⁶ He also attempted to obtain a BTR for Ocean 9. The City refused to accept Mr. Doar's payment because Ocean 9 had open violations.

On October 6, 2017, two code enforcement officers and two Miami Beach police officers came to Ocean 9 and gave Mr. Doar a violation for operating without a BTR. They told Mr. Doar he had to shut down his store. Mr. Doar explained to them that he had an agreed order for the violations. They told Mr. Doar that if he did not shut down his business within five minutes, he would be arrested. Ocean 9 has been shut down since that time.

The Notice of Violation corresponding to the October 6, 2017 violation advised the plaintiff of its right to appeal within ten (10) days of receipt of the violation. See Defendants' Exhibit 14. The plaintiff never appealed the October 6, 2017 violation.

On or about Monday, October 9, 2017, someone from the City gave Mr. Doar a computer screenshot for the Ocean 9 account. See Plaintiff's Exhibit 17. The top of the

⁶ Mr. Doar could not renew the BTR for Ocean 11 on September 29, 2017 because Ocean 11 had an open violation. The violation was dismissed and on October 3, 2017, Mr. Doar renewed the BTR for Ocean 11.

document stated “Active Holds Exist On This Record,” signifying that the were outstanding monies owed to the City or outstanding violations. Id.; Transcript (DE# 36 at 123). The screenshot also contained the following note “As per City Attorney Office, close BTR for nonpayment. Entity cannot reapply for liquor sales and/or entertainment at 865 Collins Ave,” the location of Ocean 9. See Plaintiff’s Exhibit 17.

The plaintiff did not file an application for a new BTR. Had the plaintiff filed an application for a new BTR, it most likely would not have been granted because a City ordinance prohibits the new sale of liquor in the MXE District. Had the plaintiff applied for a new BTR and the application was denied, the plaintiff would have had the opportunity to appeal the decision, first through the City and then through the state court.

On October 11, 2017, the plaintiff paid for Ocean 9's BTR online. That payment is “in suspense” until the resolution of the instant action. Transcript (DE# 36 at 136). However, it cannot be applied to the fiscal year ending on September 30, 2017 because that “permit” has expired. Id.

Had the plaintiff made an online payment for a BTR, the BTR for Ocean 9 would have been issued once the plaintiff paid its outstanding violations, even if those violations were not paid until October 2017.

The plaintiff did not file a lawsuit in state court. The plaintiff filed the instant action on October 30, 2017.

STANDARD OF REVIEW

A preliminary injunction may be granted only if the moving party establishes four elements: (1) a substantial likelihood of success on the merits; (2) an immediate and

irreparable injury absent injunctive relief; (3) a threatened harm to the plaintiff that outweighs any injury the injunction would cause to the nonmovant and (4) the injunction will not disserve the public interest. Carillon Imps. v. Frank Pesce Int'l Grp. Ltd., 112 F.3d 1125, 1126 (11th Cir. 1997) (citation omitted); see also N. Am. Med. Corp. v. Axiom Worldwide, 522 F.3d 1211, 1217 (11th Cir. 2008) (citing Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1246-47 (11th Cir. 2002)). A preliminary injunction is “an extraordinary and drastic remedy not to be granted unless the movant clearly establishe[s] the ‘burden of persuasion’ as to the four [elements].” McDonald’s Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998) (citing All Care Nursing Serv., Inc. v. Bethesda Mem’l Hosp., Inc., 887 F.2d 1535, 1537 (11th Cir. 1989)).

ANALYSIS

The plaintiff seeks an Order:

(i) enjoining the enforcement of Ordinance No. 2016-4047 as applied to Plaintiff, (ii) enjoining the enforcement of Section 102-377(e) of the City of Miami Beach Code as applied to Plaintiff; (iii) preventing Defendants from enforcing Citation No. CC2017-03686 and (iv) ordering Defendants to issue Plaintiff a Business Tax Receipt for fiscal year 2017-2018 for its location at 865 Collins Avenue and to re-open said location without Defendants’ interference and (iv) granting such further relief deemed just and proper.

Reply (DE# 25 at 5, 11/15/17). As noted above, in order to obtain a preliminary injunction, the movant must demonstrate: “(1) [that there is] a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of the relief would serve the public interest.” Schiavo

ex. rel Schindler v. Schiavo, 403 F.3d 1223, 1225-26 (11th Cir. 2005). The undersigned will address each of these elements below.

I. Substantial Likelihood of Success on the Merits

The first element, the substantial likelihood of success on the merits, requires an analysis of the plaintiff's ability to make a showing of each of the required elements of the claims asserted. See Seiko Kabushiki Kaisha v. Swiss Watch Int'l, Inc., 188 F. Supp. 2d 1350, 1353-55 (S.D. Fla. 2002).

At the November 16, 2017 status hearing, the plaintiff told the undersigned that the plaintiff is seeking a preliminary injunction pursuant to the following counts: declaratory judgment/injunctive relief (Wrongful Closure) (Count I); violation of 42 U.S.C. §1983 (Count II); violation of the 14th Amendment – substantive due process and takings claim (Count III); violation of 42 U.S.C. §1983 (Retaliation for First Amendment Expression) (Count IV) and declaratory judgment/injunctive relief (Section 102-377(e) of the Code) (Count V). For the reasons stated below, the undersigned finds that the plaintiff has not shown a substantial likelihood of success on the merits of the above claims.

a. Procedural Due Process Claims (Counts I, II and V)

"[I]n order to maintain a § 1983 action, a plaintiff must allege conduct depriving him of a right, privilege or immunity secured by the Constitution or laws of the United States" Marrero v. City of Hialeah, 625 F.2d 499, 512 (5th Cir. 1980).⁷ The Due

⁷ The Eleventh Circuit in Bonner v. City of Prichard, 661 F. 2d 1206, 1207 (11th Cir. 1981) (en banc), adopted as precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.

Process Clause of the Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV, § 1. “The Supreme Court’s interpretation of this clause explicates that the amendment provides two different kinds of constitutional protection: procedural due process and substantive due process.” McKinney v. Pate, 20 F.3d 1550, 1555 (11th Cir. 1994). “A violation of either of these kinds of protection may form the basis for a suit under section 1983.” Id.

Procedural due process claims are analyzed in two steps: “the first asks whether there exists a liberty or property interest which has been interfered with by the State. . . . ; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” Kentucky Dep’t of Corr. v. Thompson, 490 U.S. 454, 460 (1989) (citations omitted).

“Protected property interests derive from ‘existing rules or understandings that stem from an independent source such as state law—rules or understandings that . . . support claims of entitlement to those benefits.’” Casas v. Swacina, No. 12-21083-CIV, 2012 WL 12894275, at *7 (S.D. Fla. Sept. 4, 2012), *aff’d sub nom.* Casas v. USCIS Dist. Dir. Miami, 518 F. App’x 669 (11th Cir. 2013) (quoting Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972)). “[T]he range of interests protected by procedural due process is not infinite.” Roth, 408 U.S. at 570. For instance, the Supreme Court has rejected a “generalized right to be secure in one’s business interests” as a property right protected by the Due Process Clause. Coll. Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 672 (1999). The Supreme Court has explained that:

The assets of a business (including its good will) unquestionably are

property, and any state taking of those assets is unquestionably a “deprivation” under the Fourteenth Amendment. But business in the sense of the activity of doing business, or the activity of making a profit is not property in the ordinary sense

Id. at 675.

Here, the parties dispute whether the plaintiff has asserted a protected property interest. The defendants argue that “there is no property right to the renewal of an expired business license or permit.” Defendants’ Supplemental Memorandum (DE# 38 at 7). The plaintiff maintains that “[t]he loss of Plaintiff’s business (including, inter alia, all associated goodwill, customers and reputation) is the loss of a protected property interest.” See Plaintiff’s Supplemental Memorandum (DE# 36 at 4).

The plaintiff cites to Marrero v. City of Hialeah, 625 F.2d 499, 514 (5th Cir. 1980) for the proposition that “Florida law recognizes business reputation/good will as an interest protectable under the strictures of 42 U.S.C. §1983.” See Plaintiff’s Supplemental Memorandum (DE# 36 at 4). The court in Marrero noted that:

Although Florida law may not recognize personal reputation as a liberty or property interest, **it does recognize business reputation, at least to the extent it approximates goodwill, as a property interest. Florida has long extended its protection to the intangible interests of a business. Under Florida law, “[o]ne’s business, aside from the investment of money and tangible property therein, is in every sense of the word property, and, as such, if lawful, entitled to protection from all unlawful interference.”** NAACP v. Webb’s City, Inc., 152 So.2d 179, 182 (Fla. Dist. Ct. App.1963), vacated as moot, 376 U.S. 190, 84 S. Ct. 635, 11 L. Ed. 2d 602 (1964). **Hence, since one’s business is property under Florida law, it cannot be injured or destroyed by the state without due process of law.** See Paramount Enterprises, Inc. v. Mitchell, 104 Fla. 407, 140 So. 328 (1932). Thus, for example, in eminent domain proceedings, the loss of goodwill is compensable. See, e. g., Matthews v. Division of Administration, State of Florida, Department of Transportation, 324 So.2d 664 (Fla. Dist. Ct. App. 1975). In addition, the State of Florida provides means of redress for private interference with goodwill. For

instance, the purchaser of the goodwill of a business may recover compensatory damages from a seller who destroys the value of the goodwill. See, e.g., West Shore Restaurant Corp. v. Turk, 101 So.2d 123 (Fla. 1958); Yoo Hoo of Florida v. Catroneo, 175 So.2d 220 (Fla. Dist. Ct. App.), cert. denied, 179 So.2d 212 (Fla. 1965). Also a plaintiff may recover actual damages caused by a defendant's disparaging comments about the plaintiff's business which are of a kind calculated to prevent others from dealing with the plaintiff. See, e.g., Continental Development Corp. of Florida v. Duval Title & Abstract Co., 356 So.2d 925 (Fla. Dist. Ct. App. 1978); Kilgore Ace Hardware, Inc. v. Newsome, 352 So. 2d 918 (Fla. Dist. Ct. App. 1977).

It thus appears that Florida does extend to appellants a “legal guarantee of present enjoyment” of goodwill, i.e., the value inhering in the favorable consideration of customers arising from a business’ reputation as being well established and well conducted. Since that interest is a protected property interest under Florida law, Florida may not deprive appellants of that interest without due process of law. Just as a state may not physically destroy a person's tangible property without complying with the requirements of the fourteenth amendment, so it may not destroy through the medium of speech a person's intangible property without the same compliance. **Hence, to the extent the defamatory statements injured appellants’ goodwill without due process of law, appellants have stated a claim upon which relief can be granted.**

Marrero, 625 F.2d at 514-15 (footnotes omitted; emphasis added).

Assuming, without deciding, that the plaintiff’s business is a protected property interest under Florida law, the plaintiff has not shown a substantial likelihood of success on the merits of its procedural due process claims because the plaintiff has a post-deprivation remedy. “In order to state a claim under the fourteenth amendment, the complainant must allege facts showing not only that the State has deprived him of a liberty or property interest but also that the State has done so without due process of law.” Marrero, 625 F.2d at 519. “The United States Supreme Court has held that as long as some adequate post-deprivation remedy is available to a plaintiff, no procedural

due process violation has occurred.” Peterson v. Scott, No. 2:14-CV-420-FTM-38CM, 2015 WL 3935376, at *3 (M.D. Fla. June 26, 2015); see also Cotton v. Jackson, 216 F. 3d 1328, 1330-31 (11th Cir. 2000) (stating that “[o]nly when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise.”). Here, the October 6, 2017 Notice of Violation which resulted in the plaintiff shutting down its store contained instructions on how to appeal the violation. The plaintiff could have pursued those appellate remedies.

As the Eleventh Circuit has noted, “the state may cure a procedural deprivation by providing a later procedural remedy; only when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise.” McKinney, 20 F.3d at 1557; id. at 1560 (noting that “[w]hen a state procedure is inadequate, no procedural due process right has been violated unless and until the state fails to remedy that inadequacy.”). Assuming, arguendo, that had the plaintiff applied for a new BTR, the City would have denied the application, the plaintiff is not likely to succeed on the merits of a procedural due process claim because the plaintiff would still have an opportunity to appeal the City’s denial to the state court. See McKinney, 20 F.3d at 1563 (noting that “even if [the plaintiff] suffered a procedural deprivation at the hands of a biased Board at his termination hearing, he has not suffered a violation of his procedural due process rights unless and until the State of Florida refuses to make available a means to remedy the deprivation. As any bias on the part of the Board was not sanctioned by the state and was the product of the intentional acts of the commissioners . . . only the state’s refusal to provide a means to correct any error resulting from the bias would engender a

procedural due process violation.”).

The plaintiff has not shown that the process, which includes review by the state court, is inadequate. The plaintiff may appeal any decision by the City to the state court. The state court has the power to review and redress any deficiencies in the City’s decisions with respect to the issuance of a BTR. The plaintiff’s failure to avail itself of the protections afforded through the appeal process and through the state court system does not mean that the procedures available to the plaintiff were constitutionally inadequate. See Cotton, 216 F. 3d at 1331 (stating that “[i]f adequate state remedies were available but the plaintiff failed to take advantage of them, the plaintiff cannot rely on that failure to claim that the state deprived him of procedural due process.”).

The plaintiff’s argument that it is not required to exhaust administrative remedies, see Plaintiff’s Supplemental Memorandum (DE# 36 at 4-5), is inapposite. As the Eleventh Circuit explained in McKinney:

[the plaintiff] cannot state a valid constitutional claim . . . because Florida provides an adequate process to remedy [the plaintiff]’s alleged injury.
[The plaintiff]’s case fails, therefore, not for want of exhaustion;
indeed, exhaustion is irrelevant to our decision and finds no mention in the opinion. Rather, **[the plaintiff]’s case fails because he fails to state a procedural due process claim . . .** that would give rise to a section 1983 suit.

20 F.3d at 1564 n. 20 (emphasis added). Similarly here, whether the plaintiff must first exhaust administrative remedies or not, does not change the fact that a state procedure was available to the plaintiff to remedy the asserted loss of its business. “All that due process requires . . . is a post-deprivation ‘means of redress for property deprivations satisfy[ing] the requirements of procedural due process.’” McKinney, 20 F.3d at 1563 (quoting Parratt v. Taylor, 451 U.S. 527, 537 (1981) (alteration in original)).

For the foregoing reasons, the plaintiff has not shown a substantial likelihood of success on the merits of its procedural due process claims.

b. Substantive Due Process Claim (Count III)

The defendants maintain that the plaintiff cannot show a substantial likelihood of success on the merits of its substantive due process claim because the plaintiff cannot show the violation of a fundamental right. “A ‘fundamental’ right is one that is ‘explicitly or implicitly guaranteed by the Constitution.’” Morrissey v. United States, 871 F.3d 1260, 1268 (11th Cir. 2017) (quoting San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973)). Supreme Court jurisprudence provides that:

The substantive component of the Due Process Clause protects those rights that are “fundamental,” that is, rights that are “implicit in the concept of ordered liberty,” Palko v. Connecticut, 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288 (1937). The Supreme Court has deemed that most—but not all—of the rights enumerated in the Bill of Rights are fundamental; certain unenumerated rights (for instance, the penumbral right of privacy . . . also merit protection. It is in this framework that fundamental rights are incorporated against the states. A finding that a right merits substantive due process protection means that the right is protected “against ‘certain government actions regardless of the fairness of the procedures used to implement them.’” Collins v. City of Harker Heights, 503 U.S. 115, – , 112 S.Ct. 1061, 1068, 117 L.Ed.2d 261 (1992) (quoting Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed.2d 662 (1986)).

McKinney, 20 F.3d at 1556 (footnotes omitted). “[S]ubstantive due process rights are created only by the Constitution.” Id. (quoting Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 229 (1985) (Powell, J., concurring)).

“The substantive due process doctrine prevents the government from engaging in conduct that is ‘arbitrary or conscience shocking.’” Koeppel v. Romano, 252 F. Supp. 3d 1310, 1321 (M.D. Fla. 2017) (quoting Doe v. Braddy, 673 F.3d 1313, 1318 (11th Cir.

2012) (per curiam)). The facts presented at the evidentiary hearing and the allegations contained in the Complaint do not rise to this standard. Accordingly, the undersigned finds that the plaintiff has not shown a substantial likelihood of success on the merits of its substantive due process claim.

c. Retaliation/First Amendment Claim (Count IV)

Finally, the plaintiff has not shown a substantial likelihood of success on the merits of its retaliation/First Amendment claim. The Complaint alleges that “on or about October 5, 2017, Plaintiff, through his counsel met with Deputy City Attorney Boksner to discuss Plaintiff[s] concerns regarding the ongoing changes to the hours in which a package store could sell alcohol.” Complaint (DE# 1 at ¶ 137). The plaintiff’s counsel communicated to Mr. Boksner that “Defendant[s] ongoing changes to the hours were severely impacting Plaintiff’s business income and that as a result Plaintiff would oppose any further reductions to the hours of operation.” *Id.* at ¶ 138.⁸ The following day, Code Enforcement officers and City of Miami Beach police officers effectively shut down the plaintiff’s store. *Id.* at ¶ 140. These conclusory allegations are insufficient to support a section 1983 claim based on the alleged violation of the plaintiff’s First Amendment rights.

In sum, the plaintiff has not met its burden of showing a substantial likelihood of success on the merits. “If the movant is unable to establish a likelihood of success on the merits, a court need not consider the remaining conditions prerequisite to injunctive

⁸ The Complaint also asserts that “Deputy City Attorney Boksner essentially suggested that the City’s actions were intentional[ly] targeted toward Plaintiff.” Complaint (DE# 1 at ¶ 141). However, this conclusory allegation is not supported by any facts.

relief.” Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1247 (11th Cir. 2002) (citing Pittman v. Cole, 267 F.3d 1269, 1292 (11th Cir. 2001)).

Nonetheless, for the sake of completeness, the undersigned will address the remaining elements for obtaining a preliminary injunction.

II. Immediate and Irreparable Injury Absent Injunctive Relief

The plaintiff must also show an immediate and irreparable injury if injunctive relief is not granted. To establish irreparable injury, the plaintiff must show that it will suffer an injury that cannot be adequately compensated if, at some later point in time, it prevails on the merits. United States v. Jefferson Cnty., 720 F.2d 1511, 1520 (11th Cir. 1983). The plaintiff is the owner of a liquor store that has been effectively shut down since October 6, 2017 and has been unable to generate revenue since that date. The injury complained of by the plaintiff is an economic injury. “An injury is ‘irreparable’ only if it cannot be undone through monetary remedies.” Ne. Florida Chapter of Ass’n of Gen. Contractors of Am. v. City of Jacksonville, Fla., 896 F.2d 1283, 1285 (11th Cir. 1990). Because the plaintiff can recover monetary damages, the undersigned concludes that the plaintiff has not shown it will suffer irreparable harm if an injunction is not issued.

III. Balancing of Harms

The plaintiff has shown that it will suffer economic injury should an injunction not issue. On the other hand, the issuance of an injunction would result in, at most, minimal harm to the defendants. The City has an interest in collecting taxes from businesses and ensuring that all businesses operating within the City are licensed businesses.

However, the plaintiff has been operating a licensed business since 2012. The City has also collected payment from the plaintiff for the BTR for Ocean 9 for the October 1, 2016 through September 30, 2017 fiscal year. That payment remains “in suspense” until this litigation is resolved. If an injunction is issued, the City would still be able to regulate the plaintiff’s business. The harm to the plaintiff therefore outweighs any harm to the defendants.

IV. Public Interest

The Court should also consider whether an injunction, if issued, will disserve the public interest. The plaintiff argues that “[a]n injunction which prevents the enforcement of patently unconstitutional Ordinances does not disserve the public interest. To the contrary, the public’s interest lies in the vindication of rights guaranteed under the Fourteenth Amendment.” Motion (DE# 4 at 15). The defendants maintain that “the public interest is not served by permitting unlicensed business owners to operate in the City.” Response (DE# 22 at 5). However, the issuance of the injunction sought by the plaintiff would only permit the operation of a single store, Ocean 9. The undisputed evidence is that had the plaintiff resolved its violations and paid the appropriate fee, the City would have renewed the BTR for Ocean 9. Therefore, the undersigned finds no basis to support the defendants’ assertion that “[i]t would create chaos in the City if unlicensed businesses could operate with impunity.” Id.

In the instant case, the undersigned finds that this factor is, at best, neutral.

RECOMMENDATION

Based on the foregoing, the undersigned respectfully **RECOMMENDS** that the Plaintiff’s Emergency Motion for Preliminary Injunction with Incorporated Memorandum

of Law (DE# 4, 11/3/17) be **DENIED**.

The parties shall have until **Friday, December 8, 2017**⁹ to file written objections, if any, with the Honorable Ursula Ungaro, United States District Judge. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. See 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140, 149 (1985); Henley v. Johnson, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY SUBMITTED in Chambers at Miami, Florida this **1st** day of December, 2017.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
United States District Judge Ungaro
All Counsel of Record

⁹ The plaintiff has requested that the time period for filing objections be shortened because it has asserted a continuing injury.

EXHIBIT F

MXE PACKAGE STORE PROHIBITION

ORDINANCE NO. 2016-4047

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, "DEFINITIONS," TO DEFINE PACKAGE STORES; AND AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-544 THEREOF, ENTITLED "PROHIBITED USES," TO PROHIBIT PACKAGE STORES, PACKAGE SALES OF ALCOHOLIC BEVERAGES, AND ENTERTAINMENT USES IN PACKAGE STORES IN THE MXE DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the "City") regulates the location, size, hours of operation, and minimum patron age for alcoholic beverage establishments; and

WHEREAS, Chapter 6 of the City Code establishes minimum regulations for the sale and consumption of alcoholic beverages throughout the City, and district-specific alcoholic beverage regulations are set forth in Chapter 142; and

WHEREAS, the Mixed Use Entertainment ("MXE") district, which is the City's entertainment district, is characterized by a variety of uses, ranging in intensity from apartment buildings and retail stores to restaurants and entertainment establishments, which attract a large volume of pedestrians and vehicular traffic; and

WHEREAS, package sales of alcoholic beverages in the MXE district encourage individuals to consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks; and

WHEREAS, the consumption of open containers of alcoholic beverages in public places disturbs the quiet enjoyment of the community, causes undesirable noise, and contributes to litter, noxious odors, and the general degradation of the City; and

WHEREAS, additionally, the consumption of open containers of alcoholic beverages in public places is a violation of Section 70-87 of the City Code; and

WHEREAS, it is therefore in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to prohibit package stores and package sales of alcoholic beverages in the MXE district; and

WHEREAS, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that "[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations

may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones"; and

WHEREAS, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

WHEREAS, the amendments set forth below are necessary to accomplish all of the above objectives.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. Section 114-1 of Chapter 114 of the City Code is hereby amended as follows:

**CHAPTER 114
GENERAL PROVISIONS**

Sec. 114-1. – Definitions

The following words, terms and phrases when used in this subpart B, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

Overlay district means ~~constitutes~~ a set of regulations which are superimposed upon and supplement, but do not replace, the underlying zoning district and regulations otherwise applicable to the designated areas.

Package store means any store primarily engaged in the business of selling alcoholic beverages for off-premises consumption and that has a license for package sales from the State Division of Beverages and Tobacco in the classification of 1-APS, 2-APS, or PS.

* * *

SECTION 2. Section 142-554 of Chapter 142 of the City Code is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 13. – MXE MIXED USE ENTERTAINMENT DISTRICT

* * *

Sec. 142-544. – Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are accessory outdoor bar counters, except as provided in this chapter; package stores; and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

SECTION 3. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this 19 day of October, 2016.

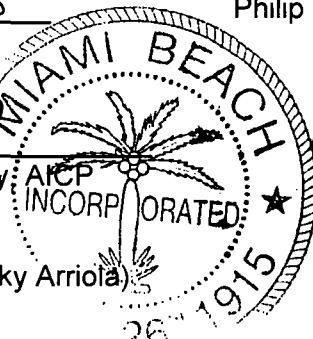
ATTEST:

[Signature] 10/22/16
Rafael E. Granado, City Clerk

[Signature]
Philip Levine, Mayor

Verified By: [Signature]
Thomas R. Mooney
Planning Director

(Sponsored by Commissioner Ricky Arriola)



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature] 10/5/16
City Attorney Date

NK

Underline denotes new language
~~Strikethrough~~ denotes removed language
Double underline denotes language added after First Reading
~~Double strikethrough~~ denotes language removed after First Reading

Ordinances - R5 O

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Jimmy L. Morales, City Manager
DATE: October 19, 2016

11:10 a.m. Second Reading Public Hearing

SUBJECT: MXE PACKAGE STORE PROHIBITION:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, "DEFINITIONS," TO DEFINE PACKAGE STORES; AND AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-544 THEREOF, ENTITLED "PROHIBITED USES," TO PROHIBIT PACKAGE STORES, PACKAGE SALES OF ALCOHOLIC BEVERAGES, AND ENTERTAINMENT USES IN PACKAGE STORES IN THE MXE DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

The Administration recommends that the City Commission adopt the Ordinance.

ANALYSIS

BACKGROUND

On July 13, 2016, the Mayor and City Commission approved a dual referral pertaining to an LDR Amendment prohibiting package liquor stores in the MXE district to the Planning Board and the Land Use & Development Committee (LUDC). The referral was sponsored by Commissioner Ricky Arriola (item C4I).

On July 20, 2016, the LUDC discussed the item and continued it to September 21, 2016 meeting. On September 21, 2016, the Land Use Committee recommended that the proposed ordinance be adopted at Second Reading.

ANALYSIS

Package stores are retail uses that primarily sell alcoholic beverages and package sales are alcoholic beverages for take-out and off premises consumption. In general, the City Code allows for package stores and package sales in any area that allows retail sales. The hours and locations (distance separation) are regulated in Chapter 6 of the City Code.

The Mixed Use Entertainment ("MXE") district is characterized by a variety of uses, including hotel, bars, restaurants, entertainment establishments, apartment buildings, and retail stores which attract a large volume of pedestrians and vehicular traffic. The consumption of alcohol and the high volume of people together are sometimes problematic and were identified as issues by the Mayor's Blue Ribbon Panel on Ocean Drive and the City Commission.

Package sales of alcoholic beverages may encourage patrons to walk around with alcoholic beverages and consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks. The consumption of open containers of alcoholic beverages in public places may cause undesirable noise, as well as contribute to litter and noxious odors. Also, the consumption of open containers of alcoholic beverages in public places is a violation of Section 70-87 of the City Code.

The attached ordinance creates a definition for package store in Section 114.1, the definition section of the Land Use Development Regulations (LDR's). Additionally, both package stores and package sales of alcoholic beverages are listed as a prohibited use in Section 142-544, under the MXE district regulations. Additionally, because entertainment is allowed in retail stores city wide, the following ordinance clarifies that, in the MXE district, package stores are prohibited from having entertainment.

PLANNING BOARD REVIEW

On August 23, 2016, the Planning Board (by a 6-0 vote) transmitted the proposed ordinance amendment to the City Commission with a favorable recommendation.

UPDATE/SUMMARY

As indicated previously, the Administration believes that the proposed ordinance amendment is a step in the right direction in terms of addressing tangible quality of life issues for residents and visitors alike. The subject Ordinance was approved at First Reading on September 14, 2016 and subsequently endorsed by the Land Use and Development Committee on September 21, 2016.

At the request of the item sponsor, the ordinance has been updated to include a prohibition on the package sales of alcoholic beverages by any retail store, in addition to the previous prohibition of package sales in alcoholic beverage establishment. This will prohibit the package sale of alcoholic beverages (beer, wine, liquor) in retail establishments in the MXE district.

CONCLUSION

The Administration recommends that the City Commission adopt the Ordinance.

FINANCIAL INFORMATION

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action. The proposed Ordinance is not expected to have a negative fiscal impact upon the City.

Legislative Tracking

Planning

Sponsor

Commissioner Ricky Arriola and Co-sponsored by Commissioner Joy Malakoff

ATTACHMENTS:

Description

Ordinance

EXHIBIT G

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

4 BEACH BLITZ CO.,

Miami, Florida

5 Plaintiff(s),

November 17, 2017

6 vs.

7 CITY OF MIAMI BEACH, FLORIDA,

Volume 01

8 Defendant(s).

Pages 1- 173

9 -----
10 PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION
11 BEFORE THE HONORABLE JOHN J. O'SULLIVAN
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 FOR THE PLAINTIFF(S): PHILLIP M. HUDSON, III, ESQ.

Arnstein & Lehr, LLP

200 South Biscayne Boulevard, Suite 3600

Miami, Florida 33131

(305) 374-3330

pmhudson@arnstein.com

16 FOR THE DEFENDANT(S): ENRIQUE DANIEL ARANA, ESQ.

Carlton Fields Jorden Burt, P.A.

Miami Tower

100 S.E. Second Street

Suite 4200

Miami, Florida 33131

(305) 530-0050

earana@cfjblaw.com

21 - and -

22 SCOTT EVERETT BYERS, ESQ.

GARY PAPPAS, ESQ.

23 REPORTED BY:

Jill M. Felicetti, RPR, CRR, CSR

Official Court Reporter

400 N. Miami Avenue, Suite 08S27

Miami, Florida 33128

jill_felicetti@flsd.uscourts.gov

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. 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

EXHIBIT H

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 1:17-cv-23958-UU

BEACH BLITZ CO., a Florida
corporation d/b/a OCEAN 9 LIQUOR,
and d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,
a municipal corporation of the State of Florida,
PHILIP LEVINE, an individual,
JIMMY MORALES, an individual,
MICKEY STEINBERG, an individual,
RICKY ARRIOLA, an individual,
MICHAEL GREICO, an individual,
JOY MALAKOFF, an individual,
KRISTEN ROSEN GONZALEZ, an individual,
JOHN ELIZABETH ALEMAN, an individual,
RAUL J. AGUILA, an individual, and
ALEKSANDR BOKSNER, an individual,

Defendants.

_____ /

AFFIDAVIT OF HERNAN CARDENO

STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared Hernan Cardeno, who after
being duly sworn, states:

1. My name is Hernan Cardeno and I am over the age of 21 and am competent to
testify to the matters set forth in this Affidavit, which are based upon my personal knowledge,

including my knowledge of the business records of the City of Miami Beach, Florida (the “City”).

2. I currently serve as the Director of Code Compliance of the City of Miami Beach, and have held that position since 2014.

3. On December 21, 2016, a City police officer issued a citation to Beach Blitz Co. (“Beach Blitz”) for selling liquor before 10:00 a.m., which imposed a \$1,000 civil fine. *See* Exhibit 1 hereto.

4. On June 25, 2017, a City Code Enforcement officer issued a citation to Beach Blitz for selling liquor after 10:00 p.m., which imposed a \$1,000 civil fine. *See* Exhibit 2 hereto. At the time of issuance, the City Code Compliance officer discovered that Beach Blitz was operating without a Business Tax Receipt (“BTR license”).

5. Accordingly, the City Code Enforcement officer also issued to Beach Blitz a Notice of Violation of Section 102-377 for “failing to obtain a Business Tax Receipt,” which imposed a \$1,000 civil fine. *See* Exhibit 3 hereto. The Notice expressly directed Beach Blitz to “Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.”

6. Beach Blitz did not cease operations or apply for or pay for a BTR license. Instead, Beach Blitz appealed all three citations to the Special Master. On September 28, 2017, the Special Master entered an agreed order in which Beach Blitz admitted to the violations and agreed to pay \$1,000 to resolve all three citations. *See* Exhibit 4 hereto.

7. In early October 2017, Code Enforcement discovered that Beach Blitz had been operating without a BTR license for over a year. Code Enforcement conferred with the City Manager who determined that closing was the appropriate course of enforcement action.

8. On October 6, 2017, Code Enforcement again cited Beach Blitz for operating without a BTR license. *See* Exhibit 5 hereto. The Notice of Violation indicated it was Beach Blitz's second offense and again directed Beach Blitz to "Cease immediately until you obtain a business tax receipt." On the same date, Code Enforcement officials and two City police officers ordered Beach Blitz to cease operations for operating without a BTR license.

FURTHER AFFIANT SAYETH NAUGHT.



HERNAN CARDENO

Sworn to and subscribed before me this 13th
day of November, 2017.


Notary Public

My commission expires: 9-8-2020

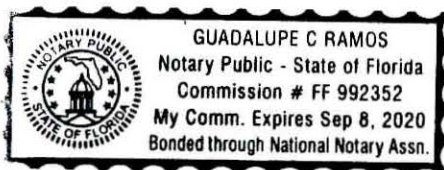


EXHIBIT 1

CITY OF MIAMI BEACH
CODE COMPLIANCE DEPARTMENT
555 17th Street
Miami Beach, FL 33139
PHONE (305) 673-7555 FAX (305) 673-7012

NOTICE OF CITY CODE VIOLATION AND FINE

SITE ADDRESS: 865 Collins Ave D
VIOLATION ISSUE DATE: 12/21/16 TIME: 8:39 AM.
ISSUED TO: Beach Blitz CO.
MAILING ADDRESS: 865 Collins Ave, D Miami Beach

DAY OF THE WEEK: SU M T W TH F S

INSPECTION OF THE ABOVE PREMISES ON THIS DATE
REVEALED YOU ARE IN VIOLATION OF SECTION:

6-3(a)(1)
OF THE MIAMI BEACH CITY CODE BY: CITY BILL FINE
offering alcoholic beverages \$25.00
in a retail establishment for \$50.00
package sales between () \$75.00
the hours of midnight () \$100.00
and 10:00am on any () \$150.00
day of the week. () \$200.00
() \$250.00
You can comply by ceasing () \$350.00
immediately illegal alcoholic () \$500.00
beverage sales upon receipt () \$1000.00
of this notice and paying () \$
a civil fine of:

TOTAL FINES 1,000
COMMENTS: 1st offense
Tax# RL-10005692

[Signature]
CODE COMPLIANCE OFFICER (SIGN)

Ofc. Negrón #1020
CODE COMPLIANCE OFFICER (PRINT)

@miamibeachfl.gov

RECEIVED BY (Signature): [Signature]

RECEIVED BY (Print Name): NATASHA MURERIWA

DATE: 12/21/16 TIME: 8:39 AM.

IMPORTANT APPEAL AND ADA INFORMATION ON BACK

NOTICE OF CITY CODE VIOLATION AND FINE

FINE(S) MUST BE PAID WITHIN 72 HOURS:

**BY CHECK OR MONEY ORDER
MAKE CHECKS & MONEY ORDERS PAYABLE TO THE
CITY OF MIAMI BEACH.**

MAILED TO:

**CITY OF MIAMI BEACH
CODE COMPLIANCE DEPARTMENT
555 17TH STREET
MIAMI BEACH, FL. 33139**

CASH PAYMENTS ACCEPTED IN PERSON ONLY:

**AT MIAMI BEACH CITY HALL
1700 CONVENTION CENTER DRIVE, 1ST FLOOR
MIAMI BEACH, FL 33139**

APPEAL PROCESS:

**FINES MAY BE APPEALED WITHIN TWENTY (20) DAYS
OF RECEIPT OF THIS NOTICE BY A WRITTEN
REQUEST TO THE CLERK OF THE SPECIAL MASTER
AT THE ABOVE ADDRESS. A \$100.00 CHECK TO
COVER THE COST OF THE HEARING MUST BE
INCLUDED.**

**FAILURE TO PAY THE FINE OR APPEAL IN THE
MANNER INDICATED ABOVE SHALL CONSTITUTE A
WAIVER OF THE VIOLATOR'S RIGHT TO CONTEST
THE CITATION AND SHALL BE TREATED AS AN
ADMISSION OF THE VIOLATION.**

**THE CITY MAY INSTITUTE PROCEEDINGS IN A COURT
OF COMPETENT JURISDICTION TO COMPEL
PAYMENT OF CIVIL FINES.**

**THE CERTIFIED COPY OF THE ORDER IMPOSING CIVIL
FINES MAY BE RECORDED IN THE PUBLIC RECORDS
AND THEREAFTER SHALL CONSTITUTE A LIEN UPON
ANY REAL OR PERSONAL PROPERTY OWNED BY THE
VIOLATOR.**

ADA INFORMATION

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact 305 604-2489 or 1-800-955-8770 (voice), 305 673-7524 (fax), 305 673-7218 or 1-800-955-8771 (TTY), 1-877-955-5334 (STS), 1-877-955-8773 (Spanish) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

EXHIBIT 2

CASE #.

CC2017-3102

CITY OF MIAMI BEACH
CODE COMPLIANCE DIVISION555 17th Street
Miami Beach, FL 33139
(305) 673-7555 FAX (305) 673-7012

NOTICE OF CITY CODE VIOLATION AND FINE

SITE ADDRESS: 865 Collins

VIOLATION ISSUE DATE: 6/25/17 TIME: 10:50

ISSUED TO: BEACH BLTZ D/B/A Ocean 9

Mailing Address: 13441 NW 5th Ct
Plantation, FL 33325

DAY OF THE WEEK: (S) M T W TH F S

INSPECTION OF THE ABOVE PREMISES THIS DATE
REVEALED YOU ARE IN VIOLATION OF SECTION:

Sec 6-3(A)

OF THE MIAMI BEACH CITY CODE BY:

	FINE
Not withstanding Subsection	\$25.00
Vendors located in the	\$50.00
MIXE mixed use	\$75.00
entertainment district	\$100.00
may make sale of	\$150.00
alcohol only for on	\$200.00
Premises Consumption	\$250.00
between the hours of	\$350.00
10:00 am and 10:00 pm	\$500.00
	(X) \$1000.00
	()

TOTAL FINES \$1,000

COMMENTS: You could comply by Cease
And desist of Alcohol Sales

CODE COMPLIANCE OFFICER (SIGN)

Enock VALERUS

CODE COMPLIANCE OFFICER (PRINT)

RECEIVED BY (Signature): [Signature]

RECEIVED BY (Print Name): Terin Blum

DATE: 6/25/17 TIME: 11:32am

IMPORTANT APPEAL AND ADA INFORMATION ON BACK

IMPORTANT

APPEAL PROCESS & ADA ACCESS:

FINE(S) MUST BE PAID WITHIN 72 HOURS:

BY CHECK OR MONEY ORDER
IN PERSON, OR MAILED TO:CITY OF MIAMI BEACH
DIVISION OF CODE COMPLIANCE
505 17TH STREET
MIAMI BEACH, FL. 33139MAKE CHECKS & MONEY ORDERS PAYABLE TO THE
CITY OF MIAMI BEACH.

CASH PAYMENTS ACCEPTED IN PERSON ONLY:

AT MIAMI BEACH CITY HALL
1700 CONVENTION CENTER DRIVE, 1ST FLOOR
MIAMI BEACH, FL 33139FINES MAY BE APPEALED WITHIN TEN (10) DAYS OF
RECEIPT OF THIS NOTICE BY A WRITTEN REQUEST
TO THE CLERK OF THE SPECIAL MASTER AT THE
ABOVE ADDRESS. A \$100 CHECK TO COVER THE
COST OF THE HEARING MUST BE INCLUDED.FAILURE TO PAY THE FINE OR APPEAL IN THE
MANNER INDICATED ABOVE SHALL CONSTITUTE A
WAIVER OF THE VIOLATOR'S RIGHT TO CONTEST
THE CITATION AND SHALL BE TREATED AS AN
ADMISSION OF THE VIOLATION.THE CITY MAY INSTITUTE PROCEEDINGS IN A COURT
OR COMPETENT JURISDICTION TO COMPEL
PAYMENT OF CIVIL FINES.THE CERTIFIED COPY OF THE ORDER IMPOSING CIVIL
FINES MAY BE RECORDED IN THE PUBLIC RECORDS
AND THEREAFTER SHALL CONSTITUTE A LIEN UPON
ANY REAL OR PERSONAL PROPERTY OWNED BY THE
VIOLATOR.

ADA INFORMATION

TO REQUEST THIS MATERIAL IN ACCESSIBLE
FORMAT, SIGN LANGUAGE INTERPRETERS,
INFORMATION ON ACCESS FOR PERSONS WITH
DISABILITIES, AND/OR ANY ACCOMMODATION TO
REVIEW ANY DOCUMENT OR PARTICIPATE IN ANY
CITY-SPONSORED PROCEEDING, PLEASE CONTACT
305-604-2489 (VOICE), 305-673-7524 (FAX) OR 305-673-
7218 (TTY) FIVE DAYS IN ADVANCE TO INITIATE YOUR
REQUEST. TTY USERS MAY ALSO CALL 711 (FLORIDA
RELAY SERVICE).F:\CODES\ALL\FORMS\TICKETS AND VIOL Form 1520-027 - City Code -
OPEN TICKET - FINES. - Rev. 03-11.doc

EXHIBIT 3

Code Compliance Department
 555 - 17th Street
 Miami Beach, Florida 33139
 Tele: 305.673.7555
 Fax: 305.673.7012

Amendment

Notice of Violation

Amendment

Violation Notice Date:	Date	6/25/2017	Time	11:30PM	Case Number	CC2017-03103
Address of Violation:	865 COLLINS AVE				Unit	D
Parcel Number:	0242032580001					
Legal Description:						
Violator Name:	BEACH BLITZ CO. % DOAR, DORON					
Mailing Address:	13441 NW 5TH CT	City and State	PLANTATION, FL	Zip Code	33325	

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Enock Valerus has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

Reference: Failure to obtain Business Tax Receipt

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Fine(s) must be paid within 72 hours of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within Ten (10) days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

Issuing Code Compliance Officer	Name:	Enock Valerus	Badge #	740	Phone and Extension:	(305) 673-7555
	Email:	EnockValerus@miamibeachfl.gov				
Received By	Compliance Date	Received Date	Received Time			
Other	06/26/2017	06/25/2017	11:30PM			

Enock Valerus
 Manager
 6/26/17

ADA Information

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Enock Valerus

EXHIBIT 4

IN AND BEFORE THE SPECIAL MASTER OF
THE CITY OF MIAMI BEACH

CODE VIOLATION CASE NOS. CC2016-01704
CC2017-03102
CC2017-03103

BEACH BLITZ, CO. c/o
DOAR, DORON,

Petitioner,

vs.

CITY OF MIAMI BEACH,

Respondent.

AGREED ORDER

This cause came before the Special Master of the City of Miami Beach, upon stipulation and agreement of Harold Rosen, Esquire, on behalf of Beach Blitz, Co. c/o Doar, Doron, 865 Collins Avenue, #D, Miami Beach (hereinafter referenced as the "Petitioner"), and Deputy City Attorney, Aleksandr Boksner, counsel to Respondent, the City of Miami Beach (hereinafter referenced as the "City"), regarding the above-styled appeal before the Special Master of certain violation(s) against the real property which is located at 865 Collins Avenue, #D, Miami Beach, Florida (the "Property") and the Code Enforcement matter referenced below in this Agreed Order. Respective counsel to City and the Petitioner having agreed to the terms of this Order,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Petitioner, Beach Blitz Co. c/o Doron Doar admit to the legitimacy of the violation charged under Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103, and recognize that the violation was properly issued by the City of Miami Beach.

CC2017-03102
865 Collins
6-36X(1) Alcohol

Beach Blitz, Co. and Doron Doar vs. City of Miami Beach
Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103
Agreed Order
Page 2 of 2

2. Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103 are hereby AFFIRMED. The Parties stipulate that a factual basis exists to establish this offense violation by the appropriate legal standard for this proceeding, and the City shall not need to establish the legitimacy.

3. The Petitioner shall be assessed a fine in the amount of One Thousand (\$1,000.00) Dollars, which shall be due within thirty (30) days of the entry of this Agreed Order.

DONE AND ORDERED by the Special Master of the City of Miami Beach, this 28th day of September, 2017.

CC
SPECIAL MASTER
As Special Master for the City of Miami Beach

Copies furnished to:

Aleksandr Boksner, First Assistant City Attorney at sandracaba@miamibeachfl.gov
Harold Rosen, 407 Lincoln Road, Suite 2A, Miami Beach, Florida 33139

EXHIBIT 5

Code Compliance Department

555 - 17th Street

Miami Beach, Florida 33139

Tele: 305.673.7555

Fax: 305.673.7012

Notice of Violation

Violation Notice Date:	Date 10/6/2017	Time 5:00 PM	Case Number CC2017-03686
Address of Violation:	865 COLLINS AVE		Unit D
Parcel Number:	0242032580040		
Legal Description:	THE SKYLARK CONDO UNIT D UNDIV 3.167% INT IN COMMON ELEMENTS OFF REC 20580-1711		
Violator Name:	Beach Blitz Co, DBA Ocean 9 Liquor C/O Doron Doar		
Mailing Address:	13441 NW 5th Court	City and State Ft. Lauderdale, FL	Zip Code 33325

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 2nd offense, and this Notice of Violation carries a fine (and other monetary charges) of \$500.00. Specifically, Code Compliance Officer Manny Bastos has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

Reference: Failing to obtain Business Tax Receipt. 2nd Offense.

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may impose fines of up to \$1,000.00 per day for noncompliance and up to \$5,000.00 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators, which will be foreclosed upon or otherwise collected as provided by this code.

If you are aggrieved by the decision of the Code Inspector in issuing this notice of violation, you may appeal. To appeal the violations submit an application for appeal within Ten (10) days of receipt of this notice of violation to the appropriate board or the Office of the Special Master 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number

Issuing Code Compliance Officer	Name: Manny Bastos	Badge # 704	Phone and Extension: (305) 673-7555 ext 6803
	Email: EmmanuelBastos@miamibeachfl.gov		
Received By	Compliance Date 10/06/2017	Received Date	Received Time 5:00 PM

ADA Information

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact 305.604.2489 (voice), 305.673.7524 (fax) or 305.673.7218 (TTY) five (5) days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Doron Doar (Business owner)

x *[Signature]*

10/6/17 5:34pm

[Signature] BA

Manny Bastos

CC2017-03686
865 Collins
102-377 BTR

EXHIBIT I

CHAPTER 6 – ALCOHOLIC BEVERAGES

ORDINANCE NO. 2016-4058

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED “ALCOHOLIC BEVERAGES,” ARTICLE I, ENTITLED “IN GENERAL,” SECTION 6-3 THEREOF, ENTITLED “HOURS OF SALE,” TO PROHIBIT PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS BEFORE 10:00 A.M. EACH DAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, in Chapter 6 of the City Code, entitled “Alcoholic Beverages,” the City of Miami Beach (“City”) regulates the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages; and

WHEREAS, the City’s Committee on the Homeless (“Committee”) has recommended that package liquor sales be restricted by two additional hours each morning; and

WHEREAS, pursuant to the Committee’s recommendation, package liquor sales should begin at 10:00 a.m. instead of 8:00 a.m. as currently authorized by the City Code; and

WHEREAS, it is in the best interest of the City, and it serves the health, safety, and welfare of the City’s residents and visitors, to prohibit package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline service/filling stations) and alcoholic beverage establishments before 10:00 a.m. each day, because the availability of alcoholic beverages for sale and consumption early in the morning discourages the acceptance of services to end homelessness; and

WHEREAS, State law expressly grants the City the authority to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; and

WHEREAS, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

WHEREAS, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

WHEREAS, Florida Courts have determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol; additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation. *Village of North Palm Beach v. S & H Foster’s, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012); and

WHEREAS, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that “[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones”; and

WHEREAS, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

WHEREAS, in fact, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community. Op. Att’y Gen. Fla., p. 497 (1950); and

WHEREAS, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages (See *Village of North Palm Beach v. S & H Foster’s, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

WHEREAS, injunctive relief is not available against the enforcement of a municipal ordinance regulating the time at which alcoholic beverages may be sold, because municipalities have the statutory authority to set times for sale of alcoholic beverages. *Id.*; *Playpen S., Inc. v. City of Oakland Park*, 396 So. 2d 830 (Fla. 4th DCA 1981); and

WHEREAS, Florida Courts have ruled that hours of operation are not a property right. *S. Daytona Rests., Inc. v. City of S. Daytona*, 186 So. 2d 78 (Fla. 1st DCA 1966); and

WHEREAS, the amendments set forth below are necessary to accomplish the objectives identified above.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Section 6-3, entitled “Hours of Sale,” of Article I, of Chapter 6, of the City Code of the City of Miami Beach is hereby amended as follows:

CHAPTER 6
ALCOHOLIC BEVERAGES

ARTICLE I. In General

* * *

Sec. 6-3. Hours of sale/violations.

- (a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a State License, and shall be according to the following schedule, ~~except as may be otherwise provided pursuant to subsection (6):~~
- (1) *Retail stores for package sales only—Off-premises consumption.* Vendors may make sales of alcohol only for off-premises consumption between the hours of ~~8:00 a.m.~~ 10:00 a.m. and midnight.
 - (2) *Retail stores, including grocery, convenience stores, and gasoline service/filling stations.* Retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only for off-premises consumption between the hours of ~~8:00 a.m.~~ 10:00 a.m. and midnight.
 - (3) *Alcoholic beverage establishments.* All alcoholic beverage establishments with state licensure—On-premises consumption only, may make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m.
 - (a) *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.
 - (b) *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m., and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 10:00 a.m.
 - (c) *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor may remain on the premises between the hours of 5:00 a.m. and 8:00 a.m.
 - (d) *Sidewalk cafes.* Notwithstanding the provisions of subsections (3)(a) through (c), alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes, as defined in section 82-366 of this Code and as otherwise permitted by the City in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as may be amended from time to time), between the hours of 1:30 a.m. and 8:00 a.m., and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m. and 8:00 a.m. No variances may be granted from the provisions of this section 6-3(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes.

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes.

- (4) *Off-premises package sales by alcoholic beverage establishments.* Off-premises package sales associated with alcoholic beverage establishments other than retail stores shall be permitted between the hours of 8:00 a.m. 10:00 a.m. and midnight.
- (5) *Private clubs.* Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use Procedures and Review Guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with section 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day.

Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

- (6) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:
- (a) The police department and the code compliance department of the city must be notified by a letter, received no later than 15 business days prior to either: (a) January 1, or (b) the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe until 7:00 a.m.;
 - (b) If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;
 - (c) There are no pending City Code violations against the alcoholic beverage establishment;
 - (d) No delinquent or past due monies are owed to the city;
 - (e) Outdoor entertainment or open-air entertainment is not allowed;

- (f) No violation of the city's noise ordinance shall be permitted;
 - (g) No violation of the approved fire code occupancy load shall be permitted;
 - (h) All required city permits and licenses are current;
 - (i) The State License is current; and
 - (j) Any other conditions required by the city manager in order to protect the public health, safety, or welfare.
- (7) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages until 6:00 a.m. on the first day of daylight savings time in the spring.
- (8) The city manager may suspend the provisions of subsection (6) at any time to protect the public health, safety, or welfare.
- (9) *Penalties and enforcement.*
- (a) The following penalties shall be imposed for a violation of this section:
 - i. The penalty for the first violation by a person or entity within a 12-month period shall be a civil fine of \$1,000.00;
 - ii. The penalty for the second violation by a person or entity within a 12-month period shall be a civil fine of \$5,000.00;
 - iii. The penalty for the third violation by a person or entity within a 12-month period shall be a civil fine of \$10,000.00;
 - iv. Upon a finding by the special master that four (4) or more violations by a person or entity have occurred within a 12-month period, the city may initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator.
 - v. A sidewalk cafe permittee that has been issued four (4) or more violations pursuant to this section or section 82-388 within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two (2) permit years following the permit year in which the sidewalk cafe permittee incurred the violations.
 - (b) Enhanced penalty. The following enhanced penalty shall be imposed, in addition to any mandatory fines set forth in subsection ~~(8)(a)~~ (9)(a) above, for violations of this section:
 - i. The sale of alcoholic beverages in violation of this section must be immediately terminated, upon confirmation by the code compliance department that a violation has occurred.
 - (c) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this section, the code compliance officer shall issue a notice of violation in the manner prescribed in chapter 30 of this Code. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation

may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

- (d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
 - i. A violator who has been served with a notice of violation must elect to either:
 - A. Pay the civil fine in the manner indicated on the notice of violation; or
 - B. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.
 - ii. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
 - iii. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the officer. The failure of the named violator to appeal the decision of the officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation. for which fines and penalties shall be assessed accordingly.
 - iv. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.
 - v. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
 - vi. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.
 - vii. The special master shall not have discretion to alter the penalties prescribed in subsection ~~(8)(a) or (8)(b)~~ (9)(a) or (9)(b).

SECTION 2. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or

re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. SEVERABILITY.

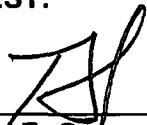
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this 9 day of November, 2016.

ATTEST:

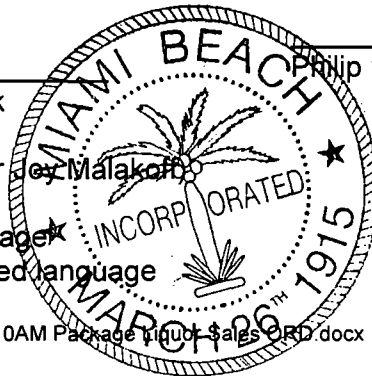
 11/28/16
Rafael E. Granado, City Clerk

(Sponsored by Commissioner ~~Joe~~ Malakoff)

Underline denotes new language

~~Strikethrough~~ denotes removed language

F:\ATTOIKALN\ORDINANCES\Alcohol\10AM Package Liquor Sales ORD.docx




Philip Levine, Mayor

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney

10/11/16
Date

NK

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Jimmy L. Morales, City Manager
DATE: November 9, 2016

10:40 a.m. Second Reading Public Hearing

SUBJECT: CHAPTER 6 - ALCOHOLIC BEVERAGES:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE," TO PROHIBIT PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS BEFORE 10:00 A.M. EACH DAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

Approve the ordinance.

ANALYSIS

At its April 20, 2016 meeting, the Committee on the Homeless passed a resolution urging the Mayor and Commission to push back package liquor sales by two hours, from the current 8:00 a.m. to 10:00 a.m. This recommendation was specifically limited to package sales and not restaurant/bar sales. The Committee reasoned that alcohol abuse was an influencing factor in homelessness in our community and served as an impediment to engaging the homeless to accept services.

On June 8, 2016, the City Commission, at the request of Commissioner Joy Malakoff, referred the proposed ordinance to the Land Use and Development Committee at the recommendation of the Committee on the Homeless. On June 15, 2016, the Land Use Committee initially discussed the item and directed the Administration to prepare an ordinance that would be applicable to all retail stores. Pursuant to direction from the Committee, the attached ordinance was drafted. The specific revisions to Chapter 6 include the following:

- For retail package sales only (off-premises consumption), sales would only be permitted between the hours of 10:00 a.m. and midnight.
- For retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages, the sale of beer and wine (off-premises consumption) would only be permitted between the hours of 10:00 a.m. and midnight.

The Land Use Committee approved the revised ordinance at its September 21, 2016 meeting and subsequently referred it to Commission for consideration. The Commission held the first reading for the ordinance on October 19, 2016.

In unanimously passing the ordinance at first reading, the Commission requested that the Administration return in six months with a report on the ordinance's impact. In addition, the Commission requested that a letter be sent to the Chief Executive Officers of the major retail chains in the City that permit single-serve alcohol sales asking that they follow the lead of Walgreens and voluntarily agree to prohibit these sales.

CONCLUSION

The Administration recommends that the City Commission approve the ordinance as proposed as a means of discouraging alcohol use among the homeless during morning early hours in hopes that they can be successfully engaged to accept services and end their personal homelessness.

KEY INTENDED OUTCOMES SUPPORTED

Enhance Beauty And Vibrancy Of Urban And Residential Neighborhoods; Focusing On Cleanliness, Historic Assets, In Select Neighborhoods And Redevelopment Areas

Legislative Tracking

Housing and Community Services

Sponsor

Vice-Mayor Joy Malakoff

ATTACHMENTS:

Description

- Ordinance

EXHIBIT J

INVOICE (00065793)**BILLING CONTACT**

OCEAN 9 LIQUOR
BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR
865 Collins Ave, D
Miami Beach, FL 33139-5807

MIAMI BEACH

1700 Convention Center Drive
Miami Beach, Florida 33139
305.673.7000

INVOICE NUMBER	INVOICE DATE	INVOICE DUE DATE	INVOICE STATUS	INVOICE DESCRIPTION
00065793	06/27/2017	06/27/2017	Due	NONE

REFERENCE NUMBER	FEE NAME	TOTAL
RL-10005692	BTR Upcharge - Late Fee	\$570.96
	Mercantile Occupancies Classes A, B, and C	\$57.50
	Occ. Code 04007701 Fee	\$274.00
	Occ. Code 95003602 Fee	\$233.00
	Occ. Code 95007700 Fee	\$274.00
	Occ. Code 95012065 Fee	\$604.00
	Occ. Code 95240029 Fee	\$233.00
865 Collins Ave D Miami Beach, FL 33139-5807		
SUB TOTAL		\$2,246.46

TOTAL **\$2,246.46**

Any refund associated with this invoice will only be issued to the billing contact listed herein.

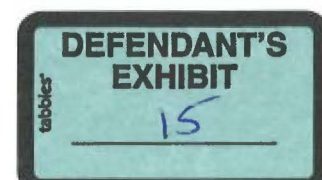


EXHIBIT K

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).

Pages 1- 173

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

APPEARANCES:

FOR THE PLAINTIFF(S): PHILLIP M. HUDSON, III, ESQ.
Arnstein & Lehr, LLP
200 South Biscayne Boulevard, Suite 3600
Miami, Florida 33131
(305) 374-3330
pmhudson@arnstein.com

FOR THE DEFENDANT(S): ENRIQUE DANIEL ARANA, ESQ.
Carlton Fields Jorden Burt, P.A.
Miami Tower
100 S.E. Second Street
Suite 4200
Miami, Florida 33131
(305) 530-0050
earana@cfjblaw.com

- and -

SCOTT EVERETT BYERS, ESQ.
GARY PAPPAS, ESQ.

REPORTED BY: Jill M. Felicetti, RPR, CRR, CSR
Official Court Reporter
400 N. Miami Avenue, Suite 08S27
Miami, Florida 33128
jill_felicetti@flsd.uscourts.gov

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: 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

EXHIBIT L

From: Caba, Sandra
Sent: Monday, September 25, 2017 11:12 AM
To: Satchell, Isabel
Cc: Boksner, Aleksandr
Subject: Agreed Order - 865 Collins Avenue, #D, Beach Blitz Co and Doar, Doron - CC2016-01704, CC2017-03102, CC2017-03103

Hi Isabel,

Also, the attached Agreed Order must be signed the earliest possible either on 9/27 or 9/28. If Harold Rosen passes by your office he will need a copy of the executed Agreed Order.

Thank you,
Sandra

MIAMIBEACH

Sandra Caba, *Legal Assistant to*
Aleksandr Boksner, Deputy City Attorney,
Gisela Nanson Torres, Senior Assistant City Attorney, and
Nicholas Kallergis, Assistant City Attorney I
OFFICE OF THE CITY ATTORNEY
1700 Convention Center Drive, 4th floor, Miami Beach, FL 33139
Tel: (305)673-7470 or (305)673-7000 ext. 6561 / Fax: (305)673-7002 /
SandraCaba@miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

Please note that Florida has a broad public records law and that any communication with the City of Miami Beach could be considered a public record. If you do not wish for your email address to become a public record, please do not send electronic communications to the City of Miami Beach.

From: Caba, Sandra
Sent: Monday, September 18, 2017 11:47 AM
To: Neves, Cynthia; Satchell, Isabel; Silva, Fernanda
Subject: RE: Agreed Order - 865 Collins Avenue, #D, Beach Blitz Co and Doar, Doron - CC2016-01704, CC2017-03102, CC2017-03103

Hi. Hope all is well.

Was this Agreed Order signed by the Special Master?

Please advise.

Thank you,
Sandra

MIAMIBEACH

Sandra Caba, *Legal Assistant to*
Aleksandr Boksner, Deputy City Attorney,
Gisela Nanson Torres, Senior Assistant City Attorney, and
Nicholas Kallergis, Assistant City Attorney I
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From: Caba, Sandra

Sent: Friday, September 01, 2017 2:31 PM

To: Neves, Cynthia; Satchell, Isabel; Silva, Fernanda

Cc: Boksner, Aleksandr

Subject: Agreed Order - 865 Collins Avenue, #D, Beach Blitz Co and Doar, Doron - CC2016-01704, CC2017-03102, CC2017-03103

Please see attached Agreed Order to be given to the first available Special Master to be executed. Kindly provide me with an executed copy

Thank you,
Sandra

MIAMIBEACH

Sandra Caba, *Legal Assistant to*
Aleksandr Boksner, Deputy City Attorney,
Gisela Nanson Torres, Senior Assistant City Attorney, and
Nicholas Kallergis, Assistant City Attorney I

OFFICE OF THE CITY ATTORNEY

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IN AND BEFORE THE SPECIAL MASTER OF
THE CITY OF MIAMI BEACH

CODE VIOLATION CASE NOS. CC2016-01704
CC2017-03102
CC2017-03103

BEACH BLITZ, CO. c/o
DOAR, DORON,

Petitioner,

vs.

CITY OF MIAMI BEACH,

Respondent.

AGREED ORDER

This cause came before the Special Master of the City of Miami Beach, upon stipulation and agreement of Harold Rosen, Esquire, on behalf of Beach Blitz, Co. c/o Doar, Doron, 865 Collins Avenue, #D, Miami Beach (hereinafter referenced as the "Petitioner"), and Deputy City Attorney, Aleksandr Boksner, counsel to Respondent, the City of Miami Beach (hereinafter referenced as the "City"), regarding the above-styled appeal before the Special Master of certain violation(s) against the real property which is located at 865 Collins Avenue, #D, Miami Beach, Florida (the "Property") and the Code Enforcement matter referenced below in this Agreed Order. Respective counsel to City and the Petitioner having agreed to the terms of this Order,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Petitioner, Beach Blitz Co. c/o Doron Doar admit to the legitimacy of the violation charged under Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103, and recognize that the violation was properly issued by the City of Miami Beach.

2. Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103 are hereby AFFIRMED. The Parties stipulate that a factual basis exists to establish this offense violation by the appropriate legal standard for this proceeding, and the City shall not need to establish the legitimacy.

3. The Petitioner shall be assessed a fine in the amount of One Thousand (\$1,000.00) Dollars, which shall be due within thirty (30) days of the entry of this Agreed Order.

DONE AND ORDERED by the Special Master of the City of Miami Beach, this _____ day of _____, 2017.

SPECIAL MASTER
As Special Master for the City of Miami Beach

Copies furnished to:

Aleksandr Boksner, First Assistant City Attorney at sandracaba@miamibeachfl.gov
Harold Rosen, 407 Lincoln Road, Suite 2A, Miami Beach, Florida 33139

EXHIBIT M

[Home](#)[Planning](#)[Permits](#)[Citizen Req.](#)[Code](#)[Business](#)[Other](#)

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License Number: BTR003568-12-2017

[UnSubscribe](#)

Business Details

Company Name: BEACH BLITZ CO. D/B/A
OCEAN 9 LIQUOR

DBA Name: OCEAN 9 LIQUOR

Status: Active

License Details

License Type: Business License

District: CCC

Applied Date: 12/27/2017

Classification: BTR

Issued By:

Issued Date: None

Status: Applied

Account Number:

Expiration Date: None

Description: Retail sale of ...

License Year: 2017

Last Renewal Date: None

Primary Address Details

Parcel:

Address: 865 COLLINS AVE

MIAMI BEACH, FL -
331395820

USA

Contacts

Type	Company	First Name	Last Name	Title
Owner	Beach Blitz	Doron	Doar	

1

Displaying items 1 - 1 of 1

Inspection Details

Details	Type	Status	Request Date	Sch
No records to display.				

1

Displaying items 0 - 0 of 0

License Fees

Fee Name	Status	Amount
No records to display.		

1

Displaying items 0 - 0 of 0

Business Types

Code Number	Code Name	Code Category
4007701	Liquor sales	Occupation

1

Displaying items 1 - 1 of 1

Attachment Details

File Name

No records to display.

Displaying items 0 - 0 of 0

ADDENDUM TO LEASE

This ADDENDUM TO LEASE is made this 4th Day of February, 2014 by and between PMJ HOLDING COMPANY, LLC a Florida limited liability company ("Landlord") and BEACH BLITZ CO. a Florida corporation ("Tenant").

WITNESSETH:

In reference to the Lease Agreement (the "Lease") dated January 26, 2004, for the premises located at 865 Collins Ave, Units D, F, and G, Miami Beach, FL 33139 (hereafter referred to as "Premises") and a Lease Renewal dated February 1, 2009 which expired on January 31, 2014.

Landlord and Tenant now desire to renew the Lease and make certain changes, all as more specifically set forth below.

NOW, THEREFORE, in consideration of the covenants of the parties herein and in the Lease, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **EFFECTIVE DATE OF ADDENDUM.** From and after the date of this Addendum to Lease (hereafter referred to as "Addendum"), the Lease shall be amended as set forth below.
2. **CAPITALIZED TERMS.** All capitalized terms in this Addendum shall have the same meanings as those in the Lease, unless specifically set forth otherwise herein.
3. **TERM.** This Lease shall be renewed as of February 1, 2014 (Lease Commencement Date) and shall expire on January 31, 2019.
4. **RENT.** The base rent beginning February 1, 2014 through April 30, 2014 shall be \$15,513.28, plus sales tax and operating expenses. Beginning May 1, 2014, the base rent will be increased to \$18,513.28, plus sales tax, followed by five percent (5%) increases on September 1, 2016 and February 1, 2018. Below is a complete rent schedule for the Premises for renewal term of the Lease:

Months	Increase	Base Rent	*Operating Expenses (aka CAM)	Sales Tax	Monthly Rent	Monthly Rent w/ Sales Tax
02/01/14 - 04/30/14	-----	\$15,513.28	\$1,942.67	\$1,085.93	\$18,541.88	\$19,839.81
05/01/14 - 01/31/15	-----	\$18,513.28	\$1,942.67	\$1,295.93	\$21,751.88	\$23,274.51
02/01/15 - 01/31/16	-----	\$18,513.28	\$1,942.67	\$1,295.93	\$21,751.88	\$23,274.51
02/01/16 - 08/31/16	-----	\$18,513.28	\$1,942.67	\$1,295.93	\$21,751.88	\$23,274.51
09/01/16 - 01/31/17	5%	\$19,438.94	\$1,942.67	\$1,360.73	\$22,742.34	\$24,334.30
02/01/17 - 01/31/18	-----	\$19,438.94	\$1,942.67	\$1,360.73	\$22,742.34	\$24,334.30
02/01/18 - 01/31/19	5%	\$20,410.89	\$1,942.67	\$1,428.76	\$23,782.32	\$25,447.09

**Operating expenses are subject to change*

5. **USE OF PREMISES.** Tenant is authorized to use the Premises as a retail store that's sells wine and spirits and other beverages, provided that the container size of other beverages are of a minimum size/volume of 1 liter. In addition, Tenant agrees to the following requirements of Landlord:
 - (a) The interior décor and design of Premises must meet Landlord's approval at all times. Interior décor and design includes and is not limited to shelving, displays, store front design, furniture, show cases, wall style and color, window treatments and signage. Any changes requested by Landlord in regard to design and décor, must begin within thirty (30) days from receipt of Landlord's notice.
 - (b) Tenant must store non-displayed inventory in a separate storage unit off the premises.

6. **OPTION TO RENEW LEASE.** At the expiration of the term stated in the Addendum to Lease, Tenant will have two (2) options to renew the Lease for an additional forty-eight (48) months each, provided that Tenant is not in default in the performance of this lease, beginning on the Lease Commencement Date.

(a) All of the terms and conditions of the Lease shall apply during the renewal term except: (i) the base rent during the option term will be the greater of market rent or a five percent (5%) increase of the previous base year's rent, plus sales tax and operating expenses, followed by a three percent (3%) annual increase on the anniversary of the Lease Commencement Date; (ii) any rent free periods, rental concessions, inducements, allowances and other similar items applicable during the initial lease term will not apply during any renewal term; (ii) Tenant will accept Premises in as is condition; (iii) Landlord shall have no obligation to perform any work in Premises. There shall be no further privilege of extension after the expiration of option period.

(b) This option must be agreed to by both Tenant and Landlord with an executed written agreement signed by both parties, not less than one hundred and eighty (180) days prior to the expiration of the initial lease term. If this agreement is not entered into within the stated time this option shall expire.

(c) Both Tenant and Landlord have the option to terminate the lease at any time and for any reason, provided that the terminating party gives the other a thirty (30) day written notice.

7. **TENANT AUTHORIZATION.** Tenant represents and warrants to Landlord that this Addendum has been validly authorized and is executed by an authorized officer of Tenant and that its terms are binding upon and enforceable against Tenant in accordance Herewith.

8. **TENANT REAFFIRMATION OF LEASE.** Tenant affirms that the Lease shall remain in full force and effect and only the specific terms stated in the Addendum to Lease shall override the Lease. This agreement shall be binding upon and shall inure to the benefit of the parties, their successors, assigns and personal representatives.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year written below.

LANDLORD:

TENANT:

PMJ HOLDING COMPANY, LLC

BEACH BLITZ CO

A Florida Limited Liability Company

A Florida Corporation

By: Philip Saada, Manager

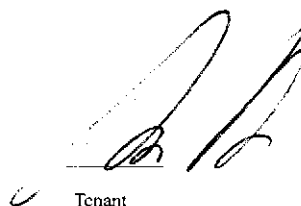
By: Doron Doar, President

Date: February , 2014

Date: February , 2014



Landlord


Tenant

[Florida Department of State](#)

DIVISION OF CORPORATIONS

[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail By Document Number](#) /

Detail by Entity Name

Florida Profit Corporation
BEACH BLITZ CO.

Filing Information

Document Number	P02000089651
FEI/EIN Number	02-0639801
Date Filed	08/16/2002
State	FL
Status	ACTIVE
Last Event	AMENDMENT
Event Date Filed	09/26/2016
Event Effective Date	NONE

Principal Address

13441 NW 5TH COURT
PLANTATION, FL 33325

Mailing Address

13441 NW 5TH COURT
PLANTATION, FL 33325

Registered Agent Name & Address

DOAR, DORON
13441 NW 5 COURT
FORT LAUDERDALE, FL 33325

Name Changed: 08/09/2012

Address Changed: 07/24/2003

Officer/Director Detail

Name & Address

Title PD

DOAR, DORON
13441 NW 5TH COURT
PLANTATION, FL 33325

Annual Reports

Report Year	Filed Date
2015	02/21/2015

2016 04/16/2016
2017 06/11/2017

Document Images

12/11/2017 -- Off/Dir Resignation	View image in PDF format
12/11/2017 -- Off/Dir Resignation	View image in PDF format
06/11/2017 -- ANNUAL REPORT	View image in PDF format
09/26/2016 -- Amendment	View image in PDF format
04/16/2016 -- ANNUAL REPORT	View image in PDF format
02/21/2015 -- ANNUAL REPORT	View image in PDF format
03/27/2014 -- ANNUAL REPORT	View image in PDF format
04/15/2013 -- ANNUAL REPORT	View image in PDF format
08/09/2012 -- Amendment	View image in PDF format
07/24/2012 -- REINSTATEMENT	View image in PDF format
01/17/2008 -- ANNUAL REPORT	View image in PDF format
05/17/2007 -- REINSTATEMENT	View image in PDF format
05/03/2004 -- ANNUAL REPORT	View image in PDF format
07/24/2003 -- ANNUAL REPORT	View image in PDF format
08/16/2002 -- Domestic Profit	View image in PDF format
08/16/2002 -- Off/Dir Resignation	View image in PDF format

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Fictitious Name Search

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Submit

Fictitious Name Detail

Fictitious Name

OCEAN 9 LIQUOR

Filing Information

Registration Number G12000088585

Status ACTIVE

Filed Date 09/10/2012

Expiration Date 12/31/2022

Current Owners 1

County MIAMI-DADE

Total Pages 2

Events Filed 1

FEI/EIN Number NONE

Mailing Address

13441 NW 5TH COURT
PLANTATION, FL 33325

Owner Information

BEACH BLITZ CO.
13441 NW 5TH COURT
PLANTATION, FL 33325
FEI/EIN Number: 02-0639801
Document Number: P02000089651

Document Images

[09/10/2012 -- Fictitious Name Filing](#)

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[12/05/2017 -- Fictitious Name Renewal Filing](#)

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Fictitious Name Search

[Filing History](#)

Submit

Florida Department of State, Division of Corporations

3:11:35 PM 1/8/2018

Licensee Details

Licensee Information

Name: **BEACH BLITZ CO (Primary Name)**
OCEAN 9 LIQUOR (DBA Name)

Main Address: **13441 NW 5 CT**
PLANTATION Florida 33325

County: **BROWARD**

License Mailing:

LicenseLocation: **865 COLLINS AVENUE**
MIAMI BEACH FL 33139

County: **DADE**

License Information

License Type: **Retail Beverage**

Rank: **3PS**

License Number: **BEV2302831**

Status: **Current,Active**

Licensure Date: **09/07/2012**

Expires: **03/31/2018**

Special Qualifications	Qualification Effective
Invoice Sent	02/21/2013
No Sale	12/27/2017
Dual Beverage and Tobacco License	09/18/2015
Quota License	09/07/2012
Liens	
Over the Counter	09/18/2015

Alternate Names

[View Related License Information](#)

[View License Complaint](#)

2601 Blair Stone Road, Tallahassee FL 32399 :: Email: [Customer Contact Center](#) :: Customer Contact Center: 850.487.1395

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3:11:49 PM 1/8/2018

Licensee Details

Licensee Information

Name: **BEACH BLITZ CO (Primary Name)**
OCEAN 11 (DBA Name)

Main Address: **13441 NW 5TH COURT**
PLANTATION Florida 33325

County: **BROWARD**

License Mailing:

LicenseLocation: **1100 COLLINS AVENUE CU-7**
MIAMI BEACH FL 33139

County: **DADE**

License Information

License Type: **Retail Beverage**

Rank: **2APS**

License Number: **BEV2332190**

Status: **Current,Active**

Licensure Date: **06/13/2013**

Expires: **03/31/2018**

Special Qualifications	Qualification Effective
Invoice Sent	06/26/2013
Dual Beverage and Tobacco License	06/13/2013
Over the Counter	06/13/2013

Alternate Names

[View Related License Information](#)

[View License Complaint](#)

[2601 Blair Stone Road, Tallahassee FL 32399](#) :: Email: [Customer Contact Center](#) :: Customer Contact Center: 850.487.1395

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licensed under Chapter 455, F.S. must provide the Department with an email address if they have one. The emails provided may be used for official communication with the licensee. However email addresses are public record. If you do not wish to supply a personal address, please provide the Department with an email address which can be made available to the public. Please see our **Chapter 455** page to determine if you are affected by this change.

CITY OF MIAMI BEACH
CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive
Miami Beach, Florida 33139-1819

TRADE NAME: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR
IN CARE OF: DORAN DOAR
ADDRESS: 13441 NW 5 CT
PLANTATION, FL 33325

RECEIPT NUMBER: RL-10005692
Beginning: 10/01/2015
Expires: 09/30/2016
Parcel No: 0242032580040

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A certificate of Use / Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Receipt are obtained prior to the opening of the new location.

Additional Information

Storage Locations

TRADE ADDRESS: 865 COLLINS AVE, D

Code	Certificate of Use/Occupation
003602	AUTO TELLER MACHINES
007700	FOOD SALES
007701	LIQUOR SALES
012065	MERCHANTS SALES
240029	ENTERTAINMENT ESTABLISHMENT W/O DANCING

CERTIFICATE OF USE	300
SQUARE FOOTAGE	1800
RETAIL INVENTORY	\$ 15000
C_U # OF UNITS	1800
FOOD INVENTORY	\$ 500
LIQUOR INVENTORY	\$ 1000
# OF AUTOTELLER MACH	1
DANCE_ENT W_O ALCOH	Y

FROM: CITY OF MIAMI BEACH
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FL 33139-1819

PRESORTED
FIRST CLASS
U.S. POSTAGE
PAID
MIAMI BEACH, FL
PERMIT No 1525

BEACH BLITZ CO.
865 COLLINS AVE, D
MIAMI BEACH, FL 33139-5807



EXHIBIT N

**UPLOADED ON CAP
AND HAND DELIVERED TO
ROGELIO A. MADAN, AICP
CHIEF OF COMMUNITY PLANNING AND SUSTAINABILITY**

February 16, 2018

Miami Beach
Planning Department
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

Re: Letter of Intent for Administrative Appeal
865 Collins Avenue

Dear Sir/Madam:

This letter of intent is submitted in support of Beach Blitz Co., a Florida corporation d/b/a Ocean 9 Liquor ("**Ocean 9**"). Ocean 9 appeals the denial by the Planning Department with respect to allowed zoning in the district in which Ocean 9 operates. Said denial results in Ocean 9's inability to obtain a Business Tax Receipt.

Until October 6, 2017, Ocean 9 serviced South Beach, Florida, with a wide variety of packaged beer, wine, liquor, and related supplies. Ocean 9's location is 865 Collins Avenue. Ocean 9 offered free delivery to the surrounding area of hotels, residences, and the beach. In addition Ocean 9 maintained a live disc jockey on the premises. Ocean 9 had operated at 865 Collins Avenue since 2011. Doron Doar is Ocean 9's principal.

A. The Events Leading up to the Instant Appeal

a. December 2016

1. On Wednesday, December 21, 2016 at 8:39 a.m. Ocean 9 was cited for alleged violation of Section 6-3(1)(A) of the City Code. The Notice stated that the violation was based upon Ocean 9's sale of alcoholic beverages between the hours of midnight and 10:00 a.m. The violation was identified as Case Number 2016-11719. See Exhibit A.

2. Subsequently, Ocean 9 was provided a different sheet of paper for the December violation bearing Case Number CC2016-01704 and alleging a violation of Section 6-3(1)(A) of the City Code. Id. See Exhibit B.

3. In this notice, the violation stated that Section 6-3(1)(A) of the City Code provides that retail stores in the MXE district for package sales only may make sales of alcohol for off-premises consumption between the hours of 8:00 a.m. and midnight. Id.

4. The December violation was issued at 8:39 a.m. – thus within the then existing lawful time periods for sale.

5. As more fully discussed below, Ocean 9 appealed the December violation to the Special Master as allowed by the Code.

b. June 2017

6. On Sunday, June 25, 2017 at 11:30 p.m., a Code Compliance Officer presented the following notices of violation to Ocean 9:

- Violation identified as Code Case Number CC2017-03102, alleging a violation of . See Exhibit C.
- Violation identified as Code Case Number CC2017-03103, alleging a violation of Article V, Section 102-377 of the City Code by failing to obtain a Business Tax Receipt. See Exhibit D.

c. Ocean 9 appeals the fines and/or violations of the December and June notices

7. Consistent with the Code and as set forth in the violation notices, Ocean 9 appealed the December and June violations to the Special Master. The Special Master accepted jurisdiction and proceeded in the ordinary course.

8. A hearing was held on the appeal to the Special Master on August 28, 2017. At that time, the parties advised the Special Master that they had reached an agreement which would resolve the violations. The agreement required Ocean 9 to pay a fine in the sum of One Thousand (\$1,000.00) Dollars. The Special Master approved the agreement.

9. As a result, on the very same day, Ocean 9 issued Check No. 2738 in the sum of \$1,000.00. However, because a written order had not been issued by the Special Master, the City would not accept the payment as an order had not been submitted and entered into the “system”. This entry into the “system” is necessary to lift the restriction on tendering payment to, *inter alia*, renew the BTR license. These facts were testified to by Manuel Marquez, Assistant Director of the Finance Department. See Exhibit E.

10. On Thursday, September 28, 2017, a full month after reaching an agreement, the Special Master issued an agreed order affirming Citations CC2016-01704, CC2017-03102 and CC2017-03103. See Exhibit F.

11. In its agreed order the Special Master assessed a fine in the amount of One Thousand (\$1,000.00) Dollars against Ocean 9. Id. The order required Ocean 9 to pay the fine within thirty (30) days of the entry of the agreed order – to wit: October 28, 2017. Id.

12. From Thursday, September 28, 2017 through and including Wednesday, October

4, 2017, Ocean 9 repeatedly presented payment to the City to comply with the Special Master's order and to obtain its BTR. See Exhibit E.

13. From Thursday, September 28, 2017 through and including Wednesday, October 4, 2017, the City provided a series of reasons of why payment could not be accepted. For example, the City claimed that it could not accept payment because the Special Master's order had not yet been put into the system. Id.

14. Finally, on Wednesday, October 4, 2017, the City accepted Ocean 9's payment of the \$1,000 fine.

15. The City also accepted late fees relative to the BTR; however it refused to accept the payment to renew the BTR.

16. This fact is confirmed by the on-line registry which shows that violations CC2017-03102 and CC2017-03103 were closed on October 4, 2017. See Exhibit G.

17. Significantly, although paid the same day as the other violations, the on-line registry shows that violation CC2016-01704 was closed on October 13, 2017 (9 days after the City accepted Ocean 9's check, 16 days after the Special Master's order and 46 days after the parties had agreed to a resolution of the issues raised by the 3 violations). See Exhibit H.

18. Despite accepting the payment which was in compliance with the Special Master's order, the City did not issue the BTR.

d. October 2017

19. On Friday, October 6, 2017 at 5:00 p.m., a Code Compliance Officer again presented a notice of violation to Ocean 9 alleging that Ocean 9 had violated Article V, Section 102-377 of the City Code by failing to obtain a BTR. See Exhibit I. The Code Case Number was set forth at CC2017-03686.

20. The October notice was issued during the period allowed for payment of the Special Master's fine relative to, in part, a violation of Article V, Section 102-377 of the City Code (failing to obtain a Business Tax Receipt) and after Ocean 9 had made the payment required by the Special Master to resolve three violations, one of which was failure to obtain a BTR.

e. Ocean 9 is Closed Down by Code Enforcement for Failing to Have a BTR License

21. On Friday, October 6, 2017, Code enforcement closed Ocean 9 for failure to obtain a BTR.

f. Ocean 9 Seeks Relief in Court

22. Ocean 9 initiated a case in Court to attempt to obtain its BTR. See Exhibit J.

23. Shortly thereafter, the Court held a hearing on Ocean 9's request for injunctive relief. See Exhibit E.

24. Although the Court denied the relief requested, it found Mr. Doar's testimony credible. See Exhibits K and L.

B. Grounds for Appeal

Ocean 9 operated without issue relative to its BTR since 2011. Beginning in June 2017, when Ocean 9 was first cited for failure to obtain its BTR, Ocean 9 has been attempting to obtain the BTR. Despite its efforts and compliance with applicable requirements, the City's failures during the months of August and September 2017 to accept the payment under the Special Master's order and accept payment of the BTR related fees, led to the closing of Ocean 9's store. The City's failure to adhere to its policies and procedures (as admitted to by Mr. Marquez – Exhibit E) resulted in the Ocean 9 entering the new fiscal year 2017/2018 without a BTR. Because of that, Ocean 9 was not operating and is not protected from the ramifications of Ordinance No. 2016-4047 which prohibits package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment within the MXE district.¹ Additionally, the Ordinance prohibits entertainment in package stores.² Because Ocean 9's business at 865 Collins Avenue is now deemed non-conforming under said Ordinance, the Planning Department denied Ocean 9's application for a BTR. It is that decision which is being appealed.

Ocean 9 submits that the facts of this matter and the undeniable fact that the City's own procedures and policies were not followed, the appeal should be granted, the decision of the Planning Board reversed and the BTR issued to Ocean 9.

Respectfully submitted

Beach Blitz Co.
through its President, Doron Doar

¹ All package stores in operation at the time the Ordinance was passed were grandfathered in as a matter of law.

² Ordinance No. 2016-4047 was passed on October 19, 2016. At that time Ocean 9 was in operation and lawfully provided entertainment.