

CAMBRIDGE LICENSE COMMISSION HEARING

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION HEARING

LICENSE COMMISSION BOARD MEMBERS:

CHAIR ANDREA JACKSON

POLICE COMMISSIONER ROBERT HAAS

FIRE CHIEF GERALD REARDON

STAFF: EXECUTIVE DIRECTOR ELIZABETH LINT

AT: Michael J. Lombardi Building
Basement Conference Room
831 Massachusetts Avenue
Cambridge, Massachusetts 02139

DATE: Wednesday, June 17, 2015

TIME: 9:38 a.m. to 10:30 a.m.

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P R O C E E D I N G S

June 17, 2015

EXECUTIVE DIRECTOR ELIZABETH LINT: Good morning. This is the License Commission hearing. It is Wednesday, June 17, 2015, 9:37 a.m.

We are in the Michael Lombardi Building at 831 Mass. Ave, Basement Conference Room.

Before you are Commissioners: Chair Andrea Jackson, Fire Chief Gerald Reardon, Commissioner Robert Haas.

And we have two matters on this morning. The first one is a report on an investigation that was conducted. I think we'll start with that.

I didn't do my cell phone talk.

CHAIR ANDREA JACKSON: So start first with the investigation of -- can I have counsel -- counsels?

ATTY WALTER SULLIVAN: Good morning,

Madam Chair. Walter Sullivan.

CHAIR ANDREA JACKSON: Good morning all.

ATTY JAMES RAFFERTY: Good morning.

CHAIR ANDREA JACKSON: If I could have you all please identify yourselves, starting with Mr. Rafferty, first name, last name and spelling it for the record, please?

ATTY JAMES RAFFERTY: Good morning, Madam Chair and the Commission. James Rafferty, R-A-F-F-E-R-T-Y, appearing on behalf of the licensee, Kapsco, Inc.

To my right is Marilyn Carter, C-A-R-T-E-R. She's the current manager, and she is -- we petitioned to have the stock transferred to her.

STEVEN KAPSALIS: Steven Kapsalis, K-A-P-S-A-L-I-S.

ATTY WALTER SULLIVAN: Walter Sullivan on behalf of Steven Kapsalis, S-U-L-L-I-V-A-N.

CHAIR ANDREA JACKSON: Thank you.

EXECUTIVE DIRECTOR ELIZABETH LINT: So the Commission received an anonymous complaint that was forwarded to us from the Police Department.

The Chair asked Michael Gardner to conduct an investigation on behalf of the Commission, as we really don't have sufficient amount of staff to accomplish what we felt was going to be a rather in-depth investigation.

There were a series of allegations. The Police Department handled one of them, which dealt with falsification of signatures on a petition, and as a result of that, criminal charges were brought. The report does say there was an indictment of an individual, that's not correct. There was no indictment.

The remaining allegations were forwarded to us, and those I can read out for you.

Falsification of an application for a package store license on March 1, 2005, with the claim that three questions were answered incorrectly or untruthfully.

Granting a beneficial interest in a liquor license to numerous restaurant tenants without License Commission approval, while operating a separately owned cash bar only in the basement.

Renewal of licenses without disclosure of criminal convictions, without disclosure of beneficial interest/transfer to restaurant tenants, and without disclosure of alteration of premises.

Closing and renovation of the restaurant without permits, inspections or License Commission approval.

Opening a new restaurant without permits, inspections or licenses.

So one of the main allegations is that Mr. Kapsalis and his corporations had ownership interest in a Section 12 and a Section 15, Section 12 and Section 15 licenses, which is a probable violation of General Laws Chapter 138, Section 17, which prohibits a single individual from holding both a license to serve alcohol at a restaurant, and a license to sell alcohol at a package store.

ATTY JAMES RAFFERTY: Within the same city.

EXECUTIVE DIRECTOR ELIZABETH LINT:
Within the same city, yes.

I'm just summarizing from the report.

ATTY JAMES RAFFERTY: I apologize.

EXECUTIVE DIRECTOR ELIZABETH LINT: As a result of that, I consulted with the ABCC. After hearing back from the ABCC, we were advised that Mr. Kapsalis needed to transfer one of the

licenses.

We scheduled a hearing to do that. We will be acting, I believe on that -- the Board will be acting on that petition subsequent to this agenda item.

Prior to acting on the petition, the Commission had determined that it needed further information, and that brings us to where we are today.

So Mr. Gardener in conducting his investigation, I'll talk about his methodology. He reviewed correspondence that Ms. Jackson provided to him, he reviewed relevant files of the License Commission, transfers of Commission hearings, audio tapes from the 1980s, legislative history of the relevant caselaw -- statutes, sorry, the Cambridge Rent Control statute, which was Chapter 36 of the Acts of 1976. He interviewed License Commission staff,

Inspectional Services staff. He conducted telephone interviews with two individuals or their counsel.

He was sent a detailed list of questions asked to respond to in writing, which he did.

CHAIR ANDREA JACKSON: "He,"
Mr. Kapsalis?

EXECUTIVE DIRECTOR ELIZABETH LINT:
Mr. Kapsalis, yes. He did respond to them.

Supportive documents were requested.

Part of the alleged anonymous complaint discussed contractors that might have done work at 991 Mass Ave in late 2014, and he reached out to all of them as well.

He did a rather extensive history and background of the licenses. There's no question that these licenses have been held either by Mr. Kapsalis's father prior to 1984, that he had the restaurant license in 1982 or '83.

There's some missing files in the Commission because there had been a flood in the storage room and many files were lost.

There's no question that he had a package store license, there's no question that he had the restaurant license, and all applications to the License Commission, it's determined that -- and adhering transcript, it was determined that at all times he was very forthcoming in that regard.

So I would first discuss the review of the allegations in light of the facts that developed based on the history, and as I said, it was a very detailed history going back to the very first license and moving forward.

Mr. Gardner determined that it seemed clear there was a violation of Chapter 138, Section 17 prohibiting ownership by the same individual in the same city by having both the

package store license and the restaurant license.

It appears that it was violated briefly in 1997 after there was a transfer from Gemini and before the transfer to the University Wine at Harvard Square, and then an ongoing basis since 2005.

However, Mr. Gardner goes on to say:

"It's very clear there was no intent on the part of Mr. Kapsalis to hide his dual license ownership. Information about his license for The Cellar was included in his application for the package store in 2005. His counsel, who was Mr. Rafferty at the time, was forthcoming in citing it in Mr. Kapsalis's presentation to the Commission in both 1997 and 2005."

He concludes at that time -- he concludes that "issuance of the dual licenses appears to be an innocent mistake, and, in fact, the Commission's granting of the license was also

approved by the ABCC."

There's also precedence by the License Commission on at least -- in at least three separate situations where the Commission has become aware of a possible violation of General Laws Chapter 138 and 17 for holding licenses under both Section 12 and Section 15.

Mr. Gardner does go into great detail explaining those. I can briefly summarize those, if you would like, Madam Chair.

CHAIR ANDREA JACKSON: Very briefly.

EXECUTIVE DIRECTOR ELIZABETH LINT: But I would start out by saying it's always been the policy of the Board to work with licensees and not punish them in these situations where it has been inadvertent or basically the fault of the Board and the ABCC in allowing the approvals.

So, one of the examples was Libby's Liquor Market and Doma Package stores as well

ownership of the restaurant Cafe of India when it was determined -- I think that was the first situation back in 2008 that the Commission dealt with the situation.

The Chair at the time was Richard Scali, I believe Commissioner Haas was here and Deputy Fire Chief Turner was representing the Fire Department.

The situation went on for well over a year in trying to determine what the best way was to resolve ownership of one of the -- in one of the corporations. I think it was the restaurant that they ultimately changed ownership of. That transfer was allowed by the Board and was subsequently approved by the ABCC.

The same situation occurred with the Blue Room and Central Bottle where ownership -- two of the owners of the Blue Room became part owners of Central Bottle, but one of them was on both

licenses. It was determined that would be a violation, and they were allowed to get rid of their ownership.

And then there was most recently Lulu's Cuisine and Hi-Rise Bread Company, and the owner of Hi-Rise was able to transfer his ownership to his wife who was also part of the business.

Do you want any more than that?

CHAIR ANDREA JACKSON: No. Thank you.

EXECUTIVE DIRECTOR ELIZABETH LINT: I'm going to move to:

ALLEGATION OF FALSIFICATION OF APPLICATION FOR A
SECTION 15 PACKAGE STORE LICENSE

Mr. Kapsalis is accused of being untruthful when he responded "No" in his 2005 application as to whether he'd ever been convicted of a federal, state or military crime.

That was one of the questions that Mr. Kapsalis was asked by Mr. Gardner. And he

answered that "As reflected in the transcript of the October 22, 1985 License Commission hearing, he stated 'I was convicted of violating certain provisions of Cambridge Rent Control Ordinance.'"

He went on to discuss that -- I'm not sure it's appropriate to put that all on the record.

ATTY WALTER SULLIVAN: Madam Chair?

CHAIR ANDREA JACKSON: Yes.

ATTY WALTER SULLIVAN: I apologize and, Ms. Lint, thank you very much.

The question that this Commission asked and that all is relevant, I believe, and please correct me if I'm wrong, was that did Mr. Kapsalis answer the question truthfully?

Mr. Gardner goes into length of a whole bunch of issues that go well beyond what this Commission asked.

So I respectfully request that Ms. Lint

only give the response relative to Mr. Kapsalis answering the question truthfully or not and nothing further.

If you do decide to go further, I would respectfully request that the hearing be closed to the public as a result of criminal -- talks about a criminal conviction and my client's rights under that law, under the CORI law, relative to disseminating information to the public.

EXECUTIVE DIRECTOR ELIZABETH LINT: I would say based on both Mr. Gardner's investigation, as well as Superintendent Burke -- Superintendent Burke's investigation regarding those types of convictions, his response was found to be accurate as stated.

In addition, the License Commission at the time of the application for the package -- it's the package store?

ATTY WALTER SULLIVAN: Yes, it is.

EXECUTIVE DIRECTOR ELIZABETH LINT: The License Commission was well aware of the municipal violation, and in addition, the result of which occurred after his application had been filed. So, at that time, the application was approved.

He's also accused of being untruthful in answering "No" to Question 12 on the March 1, 2005 application for the package store license. The question is: "Do you own the premises?"

And in this instance, Mr. Gardner determined it was a matter of corporate identity. The package store application was being made on behalf of Kapsco, Inc. Kapsco, Inc does not own the premises at 991 Mass Ave. Mr. Kapsalis does. So, in fact, he did properly answer the question by elaborating in his answer identifying himself personally as the owner. There's no ambiguity or

untruthfulness in his answer.

He's also accused of being untruthful in answering "No" to Question 14c regarding whether a person or entity listed in Question 14 ever held a license or beneficial interest in a license issued under Chapter 138 which is not presently held.

Mr. Gardner's conclusion here is that Mr. Kapsalis is the person listed in Question 14 as having a direct or indirect beneficial or financial interest in the license being applied for. In this instance, it appears his answer "No" is inaccurate.

Kapsco, which he was one hundred percent owner, briefly held the same package store license in 1997 after having received it from Gemini and prior to selling it to University Wine Shop at Harvard Square, Inc. He also held a beer and wine restaurant license attached to his

Bigelow Restaurant from April '85 until he sold it apparently sometime in 1990. As Mr. Gardner read the question, he should have answered "Yes" and then elaborated in Question 14d.

However, he goes on to say "This appears to be innocent -- an innocent or inadvertent mistake. He made no effort -- Mr. Kapsalis made no effort to hide his prior ownership of the package store, a fact known to the Chair of the License Commission, who raised it as an apparently positive factor in support of the application when the Chair at the time said that 'So you're just going back to what you were before Mr. DeRuzzo owned it.'" And that was assented to by both Mr. Kapsalis and Mr. Rafferty at the time.

The next section is:

GRANTING A BENEFICIAL INTEREST OF LIQUOR
LICENSE TO NUMEROUS RESTAURANT TENANTS
WITHOUT LICENSE COMMISSION APPROVAL

This allegation appears to refer to the fact that at least from the fall of 2006 until the fall of 2015, Mr. Kapsalis appears to have turned all responsibility and financial control of the restaurant side of the business to third parties. It is not known if he had a similar arrangement prior to the fall of 2006.

Apparently this was never reported to the License Commissioner. Ms. Carter is listed as matter of record and appears to have had nothing to do with the operation of the restaurant, so presumably she managed bar service, and it's apparent that he maintained full control over -- Mr. Kapsalis retained full control over the liquor license.

Whether that's granting a beneficial interest in the liquor license to who was referred to as Mr. Gilson and Mr. Arms, is a question that the Board at sometime would have to

consider. The Board would then also have to consider what any other restaurants in the city are doing.

But, clearly, Mr. Arms and Mr. Gilson did not have any interest in the liquor sales.

The next section was:

RENEWAL OF LICENSES WITHOUT DISCLOSURE OF
CRIMINAL CONVICTIONS, WITHOUT DISCLOSURE OF
BENEFICIAL INTEREST TRANSFERRED TO RESTAURANT
TENANTS AND WITHOUT DISCLOSURE OF ALTERATION OF
PREMISES

So the question here was whether Mr. Kapsalis should have revealed his criminal convictions, which we've already dealt with, that it's determined there really weren't. The ABCC approved renewal form, which is their form, does not require disclosure of that information. It requires only that the licensee certified the renewed license will be of the same type for the same premises now licensed, the licensee has complied with all laws of the Commonwealth

relating to taxes, and the premises are now open for business, and if not, explained.

They also have to certify what entertainment devices are in use and that are for entertainment and not gambling purposes. There was no -- no inconsistencies in the renewal affidavits.

DISCLOSURE OF BENEFICIAL INTEREST/TRANSFER TO RESTAURANT TENANTS

It's Mr. Gardner's contention that subcontracting out the restaurant portion of the business should have been reported to the License Commission and obtained License Commission approval prior to implementation of that.

So that would've been for both Mr. Gilson and Mr. Arms.

Whether or not that's a violation of 138, 12A is rather ambiguous based on this report, and I don't know that a determination has made in

that regard.

ALTERATION OF PREMISES

This matter was disposed by the Commission at a hearing in September of 2000. The premises description from 1985 until 2000 was either inaccurate or ambiguous. Sometime in the late 1990s the approved bar was moved, according to representations made by Mr. Rafferty, who was Mr. Kapsalis's counsel at the time, from one side of the room to the other.

Mr. Rafferty accepted some responsibility for failing to notify the Commission of that change. The Commission accepted the explanation, approved the change, and Mr. Gardner feels there's no reason to reopen that matter now.

CLOSING AND RENOVATION OF A RESTAURANT WITHOUT PERMITS, INSPECTIONS OR LICENSE COMMISSION APPROVAL

Neither Mr. Kapsalis nor his manager

notified the Commission of the disruption resulting from Mr. Arms abrupt departure in November of 2014; however, License Commission Chief Investigator, Andrea Boyer, was reading an article and immediately went down to the restaurant and informed the Commission immediately as well as to what was happening at the restaurant.

She received assurances from Ms. Carter that the restaurant would be remaining open with a reduced menu while renovations were undertaken, and Ms. Carter took affirmative steps to keep Ms. Boyer and the Commission informed.

There were -- there was definite communication on a regular basis and I was well informed of it.

Although unfortunate, disruptions occur in the restaurant business, the Commission in this situation acted consistently, as it has in

others, to work with the license holder providing consideration as they attempt to recover operations. It's the Commission's interest in ensuring that needed renovations get done to better serve the public.

And in this particular situation, they were handled very quickly, and the restaurant was restored to full operation in either December or January.

PERMITS

The plumber hired by Mr. Kapsalis to replace the sink did not pull a permit as he should have. Ms. Boyer's prompt action corrected that. He got a permit the next day.

Subsequent inspections by the Inspectional Services Department found that a dishwasher and some light fixtures had been replaced; work that did that require a permit. Mr. Kapsalis said he didn't realize that. Late

permits were issued by ISD and Mr. Kapsalis was charged a late fee, which basically doubled the price of what the original permit would have been.

Subsequent inspections found no additional issues.

The party making the accusations identified a number of contractors whose vehicles had been observed outside. Mr. Kapsalis was asked about these confirmed several of them had done work at the restaurant. Mr. Gardner attempted to contact those he said he had not worked with. He was unable to reach all of them. Those he did speak with said they had done no work at that address, and one said he was a milkman and delivered the milk in the city, but not to 991 Mass Ave.

OPENING A NEW RESTAURANT WITHOUT PERMITS,
INSPECTIONS OR A LICENSE

Mr. Gardner concludes the disruption in service was not so lengthy that it amounted to the opening of a new restaurant.

The Commission encourages renovation, when appropriate, to ensure proper sanitary conditions and to improve the dining experience for the public.

And that basically sums up the report.

CHAIR ANDREA JACKSON: So out of all of that, in my opinion, I think, the two issues that I have is just making sure that if work was done in the restaurant, you need to make sure that you pull your permits.

It shouldn't require ISD coming in there and finding it. You should be affirmatively taking the steps. And if you're making any modifications, (a) let the Commission know and (b) make sure you pull a permit.

The only other issue for me is as it

relates to the work of the chefs in the restaurant, and I'm not sure whether this Commission is prepared to deal with it specifically as it relates to Mr. Kapsalis or this is something we need to be looking at globally across the board, and I'm not sure whether or not we want to be looking into those types of arrangements. I think that's a Board decision, again, not necessarily germane to Mr. Kapsalis, but across the board.

So I don't know if you have any other comments.

Do you have any other comments you would like to add or...?

ATTY JAMES RAFFERTY: Could I just add some context on that because --

CHAIR ANDREA JACKSON: Sure.

ATTY JAMES RAFFERTY: -- I participated, as the report indicates, in many years in some of

the decisions made here.

The issue -- just for historical context, the issue around having a separate kitchen operation first became prominent in Cambridge at the old Forest Cafe which was operated by Mr. Gaudet, a long-time licensee. His father held the license before him. It's in the location now of where West --

EXECUTIVE DIRECTOR ELIZABETH LINT:

Giulia.

ATTY JAMES RAFFERTY: Giulia or West Side. I think it's West Side.

EXECUTIVE DIRECTOR ELIZABETH LINT: No.

It's Giulia.

MARILYN CARTER: Giulia.

EXECUTIVE DIRECTOR ELIZABETH LINT:

Giulia.

ATTY JAMES RAFFERTY: Oh, it's Giulia.

At any rate, Mr. Gaudet contracted with a

young chef who provided a Mexican cuisine, and it proved to be very popular, but the food service -- and we had conversations -- I had conversation with License Commission staff at the time about that model, but for years, the Forest Cafe had a very popular Mexican restaurant, and I reviewed with them their operations, I did not represent them, but I knew of Mr. Kapsalis's interest.

That model was then duplicated in Porter Square at the old Porter Cafe where Spirit is now whereas another chef operated a barbecue operation in the kitchen, the long-time family, the Shine family, operated the Border Cafe.

We're talking now in the '80s and the '90s where that service was provided by another chef, who ran the kitchen, collected the meals, but separated from alcohol.

So I quite concur, Madam Chair, that if it's a policy -- it's a longstanding policy or

practice that's employed and continues to be employed. I'm not sure what Mr. Arms's current relationship is, but I read that he's now at Passim, which is a licensed establishment in Cambridge. I don't know whether he has the same type of relationship at Passim that he had here, but I would agree that it is something that if it warrants attention, it should be done on a macro level, and there is lengthy precedent in past practice and in ongoing operations.

CHAIR ANDREA JACKSON: Thank you.

Do you have any questions? Comments?

POLICE COMMISSIONER ROBERT HAAS: No. I agree. I think there's some policy issues that have been identified in the report that we're going to have to take in a different forum, not this forum.

And I concur with Mr. Rafferty that with respect to this issue, as there is past

precedence with respect to that being a longstanding past precedent, but I think it's something that is worth revisiting by the License Commission at some point in the future.

FIRE CHIEF GERALD REARDON: I agree with the Commissioner's statements. I'm aware of longstanding issues throughout the city very similar to what counsel has talked about, so it had to be dealt with. It wouldn't be in this forum, as the Commissioner said, but we would have to look at that on a citywide level, not an individual level.

CHAIR ANDREA JACKSON: So I'm comfortable that Mr. Gardner did a very thorough job investigating the allegations. I don't know if you have anything you would like to add? Comment? Question?

ATTY WALTER SULLIVAN: I'd have you know, Madam Chair, we sent Ms. Lint an email last night

regarding our objections to certain factual errors in that report.

Our concern last night was the fact that there was a potential that the Commission would be posting this investigatory report on-line, and as stated, we find this very inappropriate, especially with the report contained, but also, it has never been done on behalf of -- on any other licensee.

I think with what you said is I don't think there's anything in that report that shows that Mr. Kapsalis did anything wrong that would rise to a level of any type of violation hearing being conducted. And that my recommendation would be subject to the report being placed "in the file," and not "on file," is that the report be redacted, or at least a public copy of that be redacted, that my client -- ensures would not be made available to the public relative to issues

of CORI and other information that would not be subject to a public records request.

CHAIR ANDREA JACKSON: So noted.

ATTY WALTER SULLIVAN: Thank you.

CHAIR ANDREA JACKSON: So based on the report received and comments, I make a motion that we place the matter --

EXECUTIVE DIRECTOR ELIZABETH LINT:
Public.

CHAIR ANDREA JACKSON: Oh, I'm sorry.
Are there any members of the public that wish to be heard in this matter?

Seeing none, I make a motion that we place this matter on file.

ATTY WALTER SULLIVAN: Madam Chair, with all due respect, "on file" has the definition of that you've made a finding and placed it on file. "In the file," that it's being placed in the file. With all due respect, I request that you

rephrase that.

CHAIR ANDREA JACKSON: Sure.

POLICE COMMISSIONER ROBERT HAAS: So, Madam Chair, I think before -- I think we -- I mean, Ms. Lint has read or summarized Mr. Gardner's report. I think the body should take each of these allegations now and make a ruling as to whether or not --

CHAIR ANDREA JACKSON: Sure.

POLICE COMMISSIONER ROBERT HAAS: -- it concurs with the report, or takes exception with it, or get clarification, so that there's some finality with respect to the allegations.

CHAIR ANDREA JACKSON: Absolutely. That's fine.

POLICE COMMISSIONER ROBERT HAAS: I think just accepting a report doesn't really address what the Commission's view is with respect to those allegations.

UNIDENTIFIED AUDIENCE MEMBER: Is it too late to throw something in?

CHAIR ANDREA JACKSON: Yes. At this point, yes.

So we can go allegation by allegation, starting with No. 2.

POLICE COMMISSIONER ROBERT HAAS: I think that's the appropriate thing to do. I mean, simply placing the report on file would not reflect --

CHAIR ANDREA JACKSON: That's fine.

POLICE COMMISSIONER ROBERT HAAS: -- the Commission's view with respect to its findings concerning those allegations.

CHAIR ANDREA JACKSON: All right. So let's start them with the --

ATTY JAMES RAFFERTY: Madam Chair, can I raise a procedural question because this is an area that strikes me as quite unusual.

Does the Commission intend to -- the report contains conclusions, legal conclusions, for which the licensee has not had an opportunity, was only provided a copy of the report within 24 hours of its issuance. It's notable that the one conclusion that jumped out at me was the conclusion around the issue involving the food operation at the restaurant.

I found it notable that in all the investigatory work of Mr. Gardner, he never spoke to the manager of record at the restaurant, Ms. Carter. He relied on speculation by Mr. Gilson as to what went on beforehand. But he never inquired how many hours Ms. Carter spends on the premises, what her role is there.

But it doesn't strike me that this licensee has been noticed about attending a hearing today to address issues around that management.

So I know the report contains recommendations, and if the intention is here as to whether or not to make comment among the recommendations, I suppose that's within the purview of the Commission, but to reach into conclusions contained in the report and either affirm those conclusions or otherwise, it feels to me that this feels -- I'm not sure what the Commission is doing at this juncture.

What was done here was an application was filed by Kapsco at the direction of the Commission based upon advice and direction received by the ABCC. That application has been pending because of an anonymous complaint.

Anonymous complaints are given various levels of weight for a variety of reasons, including the absence of one to be able to identify whether the complainant had the bias or prejudice or motives beyond policy.

The Commission has taken what, in my experience, is an unprecedented step here to retain an outside investigator to conduct this investigation. Frankly, I'm pleased with the conclusions. I think there is a variety of ways they could have been reached, but to the extent the Commission felt that that was necessary, I think that's fine.

But this strikes me no different than when Ms. Boyer receives a complaint from the Police Department regarding an incident at a licensed establishment. There's determination made as to whether or not something should go to the Commission for further investigation or a hearing.

If that's what we have here, which is Mr. Gardner in the role the chief investigator typically plays, those reports then don't come to the Commission and the Commission takes votes on

Ms. Boyer's recommendations.

I think the placing of the report in the file at this point is adequate. Ms. Boyer is chief investigator. If the Commission or the Chair feels she needs to further explore this, it would seem to me the Commission should work within the infrastructure of its investigatory framework and not turn this morning's hearing into an adjudicatory process about the conclusions in that report.

POLICE COMMISSIONER ROBERT HAAS: My only reservation is that then we're taking the report at face value, and that these allegations for all intents and purposes then are left out there, and the Commission has taken no action with respect to those allegations, right?

ATTY JAMES RAFFERTY: No. I don't accept that characterization. The Commission doesn't initiate -- if the Commission -- the Commission

receives allegations all the time, anonymous or otherwise. Every one of those allegations doesn't then have to get affirmed or rejected.

If there's information here to warrant notice and disciplinary proceedings, then the Commission makes that determination not sitting in a public setting, but based on the information it provided.

So the mere fact that an anonymous -- I think we're stretching the term "anonymous," but we're going to go with the notion that these are anonymous complaints. They weren't just given to the police. I have a copy of this, are aware of what was sent to Inspectional Services. This has been widely disseminated. Why its author chooses not to have their name published is somewhat ironic to me given the level of publicity that's been attached to this, but having said that, the Commission's lack of referring a matter for

investigation is action within itself. So if you received a report, and based on the report, there's nothing in the Commission's mind that warrants the initiation of an investigation, or a discipline -- more accurately, you've had your investigation. If there's nothing contained within the report that would cause the Commission to notice the licensee to come in for a disciplinary hearing, that in and of itself is an action.

I don't agree that an anonymous complaint requires a vote by the Commission.

POLICE COMMISSIONER ROBERT HAAS: So placing the report on file, isn't that basically indicating it concurs with the findings of the report in its totality?

EXECUTIVE DIRECTOR ELIZABETH LINT:

Not --

ATTY WALTER SULLIVAN: Commissioner,

we're requesting that you place it "in the file" which is not "on file."

As you know having been a police officer for many years, a police officer conducts investigations and makes a determination as to whether to proceed or not with that investigation. Sometimes they end that investigation. Other times they go to the Cambridge District Court or they go to the DA's office and seek indictment to the Superior Court and move forward with the criminal complaint in an adjudicatory process.

This Commission is sitting in an adjudicatory process relative to violation hearings. For you to take action on these incidents, without proper notice to the licensee, totally different than you've always handled cases, in which a complaint comes in the door, goes to the investigation unit, the investigation

unit conducts an investigation, makes a determination should it move forward or not.

You're skipping by a whole -- you're seeking to skip by a whole process here based on an anonymous complaint.

ATTY JAMES RAFFERTY: The Commission could conclude that it received an anonymous complaint, it authorized an investigative report, it's received the investigative report. Based on the information in the investigative report, the Commission has decided to proceed with Kapsco application.

We're here today because of the Kapsco application. Action was deferred to allow for an investigation. If the result of the investigative report is the Commission now feels that they can go forward on the Kapsco application, I think that is the appropriate action for the Commission.

POLICE COMMISSIONER ROBERT HAAS: Madam Chair, I withdraw my motion.

CHAIR ANDREA JACKSON: I was just going to add, and I think for me, I highlighted the areas that I had concerns with, that I think we need to look at as a Board, and with the notion that Mr. Kapsalis being informed that if he was going to be doing any type of renovations, making sure the Board is aware of it.

POLICE COMMISSIONER ROBERT HAAS: Uh-huh.

CHAIR ANDREA JACKSON: So, in my opinion, that is actually, I guess, perhaps in summary, addressing the complaints, and if you feel differently, I'm certainly open.

POLICE COMMISSIONER ROBERT HAAS: No.

FIRE CHIEF GERALD REARDON: I agree also, if we take any kind of affirmative action here today, it would indicate due process to the -- we to have treat this as any other violation and

make notice, have a separate hearing, but I am of the opinion also to place the matter --

CHAIR ANDREA JACKSON: In the file.

FIRE CHIEF GERALD REARDON: -- in the file.

CHAIR ANDREA JACKSON: I think -- again, I think a thorough investigation was done. I specifically asked Mr. Gardner to conduct the investigation because I wanted it to be extremely thorough. I knew that the staff would not have time to put the time and effort and the many hours spent into the investigation as he did.

And, again, for me, I've addressed the concerns that I have as it relates to whatever relationship, as counsel has addressed, between the restaurant chef and relationships, and then also, again, the whole premise of the permitting.

So, again, I'll make a motion, it doesn't have to be seconded, but I make the motion to

place the matter in the file.

FIRE CHIEF GERALD REARDON: Second.

CHAIR ANDREA JACKSON: All those in favor signify by saying aye.

POLICE COMMISSIONER ROBERT HAAS: Aye.

FIRE CHIEF GERALD REARDON: Aye.

EXECUTIVE DIRECTOR ELIZABETH LINT: So the second matter before the Board is the transfer application.

CHAIR ANDREA JACKSON: If you could give the Board the synopsis of the application, please?

EXECUTIVE DIRECTOR ELIZABETH LINT: Yes. As was advised by ABCC, a transfer was filed to transfer the license held by Kapsco to Ms. Carter. Paperwork is all in order. The background is fine. So it's new officers and directors, transfer of stock for Cellar Wine & Spirits at 991 Massachusetts Avenue.

CHAIR ANDREA JACKSON: New officers and directors and transfer of stock?

EXECUTIVE DIRECTOR ELIZABETH LINT:
Correct. Ms. Carter would be president, treasurer, secretary, director and one hundred percent stock owner.

ATTY JAMES RAFFERTY: Correct.

Just for the record, Madam Chair, there was a question on sequencing. We have prepared and filed with the Commission copies of our proposed change of officers and directors with the Secretary of State's Office, but have refrained from doing so until such time as the matter is acted upon.

So I know sometimes there's a sequencing question do you change the officers and then come for approval. I think we concluded that the better practice here would be to have those documents ready, they're in the file, and if

there was an affirmative determination here and then ratification at the ABCC, then they would be filed with the Secretary of State's Office.

CHAIR ANDREA JACKSON: Just so we can have it on the record, if one of you could provide us with just a little bit about Ms. Carter's background, please?

ATTY JAMES RAFFERTY: Sure. As counsel for Kapsco, and we get paid by the word, so I do have to justify my involvement here.

Ms. Carter -- this change of officers, directors and ownership interest really will have no change in the operation of the package store. Ms. Carter has been the manager of record since the store opened back in 2005.

MS. CARTER: 2004.

ATTY JAMES RAFFERTY: 2004. At any rate, it is a popular package store, it has a notably disciplinary history with -- no history of

discipline with the exception of sting operation some eight or nine years ago.

There are some practices employed at the store that may be of interest to the Commission. The store opens at 10:00 a.m. The store does not sell nips or pints, but -- and the store closes at 10:30. None of those practices will change.

Ms. Carter has a staff that she employs as the manager. The difference now is Ms. Carter is purchasing Mr. Kapsalis's interest through the stock transfer agreement that's been filed with the application.

The financial information for her source of those funds is included as required in the filing.

It is a full value consideration with the pricing set forth in the application.

Ms. Carter, as I said, has been experienced now for more than a decade in running

this particular location. She lives in the building, and she intends to continue to operate the package store.

I would offer one aside in the context of what brought us here. The -- there's some suggestion in the report that there might have been a lack of awareness of a particular statute, and in my experience that was not the case. The statute has specific language and the language says no person, entity or corporation can hold one. At no point in time was there a corporation holding both of these licenses.

And Chapter 156 in the licensing regulatory framework makes significant distinctions between corporations and individuals. In corporations, as you know, corporate votes are required. You must have a corporate vote to change a manager. You must have a corporate vote to file an application.

There is a corporate framework and structure. There was an understanding and a full disclosure, as the report indicates, that Mr. Kapsalis had another corporation that operated that had a Section 12 license.

I think the issue arose on a matter of interpretation, and Mr. Sullivan, I thought, did an effective job in outlining that question of that issue in response to Ms. Lint.

But we accept the fact that the ABCC's interpretation of this provision of this statute means that the entity, corporation or person extends to ownership interest. So there is no question that the ownership interest in both of those corporations was held exclusively by Mr. Kapsalis.

And based upon that interpretation by the ABCC, we filed this transfer application.

Ms. Carter does not have an ownership

interest in the Section 12 license, so the Section 12 license is unaffected by this.

It is worth noting that both licensed establishments are located in the same building, but they are separate licensed establishments, and at no point is there a suggestion that the licensed operation of one occurs in the location of the other, so that's our little context of the application.

CHAIR ANDREA JACKSON: Thank you.

I think as noted earlier there's been at least a few instances where this has happened before as it related to dual licenses, we had Libby's Liquor Market and Doma, and there was also Central Bottle and the Blue Room, Lu-Lu's Cuisine and Hi-Rise Bread Company. So we have instances where we've had the same issue come before this Board.

Do you have any questions at all?

POLICE COMMISSIONER ROBERT HAAS: No questions.

CHAIR ANDREA JACKSON: Any questions?

FIRE CHIEF GERALD REARDON: No.

CHAIR ANDREA JACKSON: Are there any members of the public that wish to be heard in this matter?

Seeing none, I make a motion that we approve the application from Kapsco, Inc, doing business as Cellar Wine & Spirits, transferred to Marilyn Carter for the package store license located at 991 Mass Ave, and also for the transfer of stock and change of corporate officer/director, is there a second?

FIRE CHIEF GERALD REARDON: Second.

CHAIR ANDREA JACKSON: All those in favor signify by saying aye.

POLICE COMMISSIONER ROBERT HAAS: Aye.

FIRE CHIEF GERALD REARDON: Aye.

CHAIR ANDREA JACKSON: Aye.

You're all set.

ATTY WALTER SULLIVAN: Thank you, Madam
Chair, and thank you, Commissioners.

CHAIR ANDREA JACKSON: I make a motion
that we adjourn.

FIRE CHIEF GERALD REARDON: Second.

CHAIR ANDREA JACKSON: All those in favor
signify by saying aye.

FIRE CHIEF GERALD REARDON: Aye.

POLICE COMMISSIONER ROBERT HAAS: Aye.

(Hearing adjourned at 10:30 a.m.)

ERRATA SHEET

INSTRUCTIONS: After reading the transcript, note any change or correction and the reason therefor on this sheet. Sign and date this errata sheet.

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I have read the foregoing transcript, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statement(s) made by me.

CERTIFICATION

Commonwealth of Massachusetts

Norfolk, ss.

I, Jill Kourafas, a Notary Public in and
for the Commonwealth of Massachusetts, do hereby
certify:

That the hearing herein before set forth
is a true and accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set
my hand this 18th day of June, 2015.

Jill Kourafas
Certified Shorthand Reporter
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