

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
BUREAU OF CHILDREN AND ADULT LICENSING

MICHIGAN COMMISSION FOR THE BLIND,

PETITIONER

V

DOCKET NO.:2010-109

HAZELL BROOKS,

RESPONDENT

_____ /

DIGITALLY RECORDED TRIAL
BEFORE ADMINISTRATIVE LAW JUDGE ROBERT MEADE
Lansing, Michigan - Wednesday, May 5, 2010

APPEARANCES:

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1 Lansing, Michigan

2 May 5, 2010, Wednesday - 9:06 a.m.

3 * * * * *

4 P R O C E E D I N G S

5 ALJ MEADE: And, we'll go on the Record
6 in the matter of the Michigan Commission for the
7 Blind, Petitioner, versus Hazell Brooks,
8 Respondent; it's Docket Number 2010-109. It's May
9 5th, 2010, at 9:06 a.m, and this hearing is being
10 held at the State Office of Administrative
11 Hearings and Rules, on the 2nd Floor of the Ottawa
12 Building in Lansing, Michigan. I'm Robert Meade,
13 the Administrative Law Judge assigned to hear this
14 matter. Ms. Schmidt is here on behalf of the
15 Petitioner. The Respondent has not appeared and
16 has indicated, through her Representative, Mr.
17 Eagle, that she won't be appearing this morning.
18 Let me just go through the procedural history that
19 we have, and then I'll ask you how you want to
20 proceed this morning.

21 Back on January 12th, 2010, this office
22 received a request for a hearing from the
23 Commission for the Blind on February 18th, 2010.
24 An Order to Show Cause was issued to ascertain if
25 the Respondent wanted to continue to contest the

1 licensing action given the Board's actions
2 following the emergency suspension hearing.
3 Following the receipt of Respondent's response, a
4 Notice of Hearing was issued on March 30th, 2010,
5 setting a hearing for today's date and time. In
6 an order accompanying the Notice of Hearing, the
7 parties were advised that the testimony and
8 evidence from the license suspension hearing would
9 be incorporated into the revocation hearing. On
10 Tuesday, May 4th, at approximately 12:37 p.m., I
11 received an email from Terry Eagle, Respondent's
12 Representative; attached to the email was
13 Respondent's Motion for Hearing Continuance and
14 recusal, or removal of ALJ Robert J. Meade. In an
15 email, Mr. Eagle indicated that the motion was
16 faxed to SOAHR on April 30th, 2010. We have no
17 record of receiving such a fax. The properties in
18 the document itself that Mr. Eagle submitted
19 indicated that it was created on Tuesday, May 4th,
20 2010, at 6:26 a.m. Mr. Eagle was advised that we
21 do not accept motions by email, and also advised
22 that the hearing would continue, or begin as
23 scheduled this morning, at 9 a.m.

24 So, Ms. Schmidt, how do you want to
25 proceed this morning?

1 MS. SCHMIDT: Well, Judge, we can -- I
2 have two witnesses.

3 ALJ MEADE: Okay.

4 MS. SCHMIDT: And we can just put our,
5 get the rest of our evidence on to support the
6 revocation of the license.

7 ALJ MEADE: All right, why don't we do
8 that. Who will your first witness be, then?

9 MS. SCHMIDT: Patrick Duthie.

10 ALJ MEADE: All right. Good morning,
11 Mr. Duthie.

12 MR. DUTHIE: Good morning.

13 ALJ MEADE: Why don't you have a seat at
14 the witness stand there, and once you're seated,
15 if you could state and spell your full name for
16 me.

17 MR. DUTHIE: Yes. Patrick, P-A-T-R-I-C-
18 K, last name Duthie, D-U-T-H-I-E.

19 ALJ MEADE: And, Mr. Duthie, please
20 raise your right hand. Do you swear that the
21 testimony you're about to give will be the truth,
22 the whole truth, and nothing but the truth?

23 MR. DUTHIE: I do.

24 ALJ MEADE: Thank you. Go ahead, Ms.
25 Schmidt.

1 MS. SCHMIDT: Thank you.

2 PATRICK DUTHIE

3 DULY SWORN BY THE JUDGE, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. SCHMIDT:

6 Q Mr. Duthie, who are you employed by?

7 A I'm employed by the State of Michigan, with the
8 Michigan Commission for the Blind; specifically,
9 the Business Enterprise Program.

10 Q And what do you do for the Michigan Commission for
11 the Blind?

12 A I am a promotional agent.

13 Q And what is a promotional agent?

14 A Promotional agent helps operators find
15 entrepreneurs in our program, operate their
16 business on many levels. It would be financials,
17 food service production, equipment needs
18 (inaudible) equipment for the operation. It would
19 be helping operators with certain operating
20 procedures, maybe filling out reports, you know,
21 things like visits. I could go on and on.

22 Q Okay. And, are you familiar with Hazell Brooks?

23 A Yes, I am.

24 Q And how are you familiar with her?

25 A I was her promotional agent starting in January

1 2008, all the way up to the time of, I believe,
2 September 2008.

3 Q And did there come a time -- well, let me ask you
4 this, you're -- you're aware that at the current
5 -- at the current time, her license is suspended?

6 A Yes, it is.

7 Q That it was summarily suspended --

8 A Yes.

9 Q -- back in, I believe it was September '08?

10 A That's correct.

11 Q Okay. And --

12 A Excuse me.

13 Q -- the Judge has instructed us that we are just
14 adopting and incorporating all the evidence that
15 was presented at the suspension hearing, so now
16 we're here today just to present further evidence
17 to support an actual revocation of the license.
18 So, other than the evidence that was admitted,
19 which was mostly with regard to some incidences
20 since that took place on September 8th of '08 and
21 September 23rd of '08, were there, in evaluating
22 her performance and in your day-to-day contact
23 with her, did you find other reasons for which her
24 license should be suspended?

25 A Yes. The --

- 1 Q Well -- well, why don't we take them one by one?
- 2 A Oh, sure. And how would you like to?
- 3 Q Well, were there any problems with the hours that
- 4 she kept her cafeteria?
- 5 A Yes, there were.
- 6 Q Okay. And let's put on the Record what type of a
- 7 vending facility she operated.
- 8 A It was a cafeteria.
- 9 Q And where was that?
- 10 A That was at the location of the General Office
- 11 Building.
- 12 Q Okay.
- 13 A 7150 Harris Drive.
- 14 Q And it was -- were there other services offered
- 15 other than the cafeteria?
- 16 A There were vending machines in that facility as
- 17 well.
- 18 Q Okay. And did she operate all of the vending
- 19 machines in the building?
- 20 A That is correct.
- 21 Q Okay. So, it was -- is there a difference between
- 22 a cafeteria and a snack bar? Was there a snack
- 23 bar involved in that or --
- 24 A No, this would just be a cafeteria with vending
- 25 machines operated within that, within the same

1 facility.

2 Q Okay. Now, is there an agreement that the

3 operators enter into when they become -- when they

4 get their license?

5 A Yes, there is.

6 Q And what is that called?

7 A It's called a vending -- a "Vending Facility

8 Agreement."

9 Q I'm handing you what's been marked as proposed

10 Exhibit One, and can you identify the document?

11 A Yes, I can.

12 Q And whose -- whose agreement is this?

13 A This would be Ms. Brooks.

14 Q Okay. And this is a Vending Facility Agreement;

15 correct?

16 A That is correct.

17 Q And is this the agreement that she signed when she

18 first became an operator, if you know?

19 A It appears to be.

20 Q And why does it appear to be that?

21 A I wasn't the promotional agent at that time, back

22 in February 15, 2007.

23 Q But there is a date on the bottom of the first

24 page; what is that date?

25 A I see May 10th, 2007.

- 1 Q Okay. So, would it have been around that time
2 that -- I see that that's next to Constance
3 Zanger's name. Would that have been around the
4 time that Ms. Brooks signed it?
- 5 A I -- I can't confirm that.
- 6 Q Okay, that's fair. Now, as to the hours of her
7 operation, is that information that's found in the
8 Vending Facility Agreement?
- 9 A That is correct.
- 10 Q And where would we find that?
- 11 A That would be on Attachment E of the agreement.
- 12 Q Okay. And what is -- what information is on
13 Attachment E?
- 14 A What it shows is the operator's name, the facility
15 location, date of agreement and agreement number.
16 Below that it gives site I.D., site name and hours
17 of operation. And below the site I.D. and site
18 name is "Site I.D. 32, General Office Building
19 Cafeteria," and then underneath the "hours of
20 operation" it states "7 a.m. to 4 p.m." And below
21 that it states, "I agree to conform to the hours
22 of operation listed above as affixed by the
23 Commission after a consultation with the operator
24 and agency having charge of the property."
- 25 Q Okay. And I see at the bottom there is a space

1 for signature of the operator. Do you have any
2 personal information that that is Ms. Hazell
3 Brooks' signature?

4 A I did confirm with her on one occasion, where I
5 did actually take this document in to her, and
6 just to show her her hours of operation. She
7 stated that it wasn't her signature on the page,
8 but she said she would take my word for it.

9 Q Okay. Now, did there come a time when you were
10 getting some complaints about her hours of
11 operation?

12 A I did receive an email, yes.

13 Q I'm handing you what's been labeled -- oh, I'm
14 sorry.

15 MS. SCHMIDT: I move to admit
16 Petitioner's Exhibit One.

17 ALJ MEADE: All right, I'll accept
18 Exhibit One in the Record.

19 (WHEREUPON, Petitioner's Exhibit Number
20 One was admitted at this time.)

21 BY MS. SCHMIDT:

22 Q I'm handing you what's been labeled as
23 Petitioner's Exhibit Two. Are you familiar with
24 that document?

25 A Yes, I am.

1 Q And what is that?

2 A This was sent to me by a Patty Curtis (ph).

3 Q And are you referring to the second email message?

4 A That is correct.

5 Q Where it says, "original message"?

6 A That is correct.

7 Q Okay. And it's an email from Patty Curtis, did

8 you say?

9 A It is.

10 Q And the date of that?

11 A It was August 26th, 2008.

12 Q Okay. And she was writing this to you?

13 A Yes.

14 Q And what -- what -- what was the content of her --

15 A Just stating that she was outside the cafeteria

16 around 10:30 that morning for about five minutes.

17 She stated that at least five people could not get

18 service because both gates to the cafeteria were

19 closed. They were asking questions of why does

20 Hazell do this almost every day and -- and that

21 usually takes place before lunch, and they were

22 just asking questions like, "Can she do this?"

23 You know, "Is there a maintenance problem?" That

24 there are no signs posted when she reopened or not

25 opened, so -- so that's the content of the email.

1 Q Okay. And do you know if Patty Curtis, if she
2 works in the mail room?

3 A She does.

4 Q I'm handing the Witness what's been labeled --

5 MS. SCHMIDT: Oh, I move to admit
6 Exhibit Number Two.

7 ALJ MEADE: All right, I will accept
8 Exhibit Two in the Record.

9 (WHEREUPON, Petitioner's Exhibit Number
10 Two was admitted at this time.)

11 BY MS. SCHMIDT:

12 Q I'm handing the Witness what's been labeled
13 Petitioner's Exhibit Three. Can you identify that
14 document?

15 A Yes, this is a site visit that I entered on the
16 27th of August, 2008.

17 Q Okay. What is a site visit?

18 A A site visit is what a promotional agent would
19 enter after talking with an operator about their
20 operation or like, you know, it could either be by
21 phone call or doing an actual site visit in
22 person. So we enter the site visits to just keep
23 a documentation in terms of what happened that
24 day, how the operator is doing.

25 Q Okay. And do you have to go back to the office to

1 enter these, or do you have a laptop and you enter
2 them on the same day?

3 A I have a -- I do have a laptop but sometimes my
4 intercard works too slow, so I do like to enter
5 them at the office.

6 Q Okay.

7 A Just depending on the signal strength.

8 Q And you entered this one on which date?

9 A Um, it looks like I entered it on the 27th, August
10 27, 2008.

11 Q Okay. And that's the day after you got the email
12 from Patty Curtis?

13 A That is correct.

14 Q Okay. And, so can you tell us what you wrote here
15 for the site visit?

16 A Yes. I just stated in my site visit here, for the
17 General Office Building Cafeteria regarding Ms.
18 Hazell Brooks, that I did stop in to see Hazell
19 Brooks because I did receive a complaint through
20 an email on the 26th of August in regards to
21 Hazell closing the GOB cafeteria between 10:30
22 a.m. and 11 a.m. I also took her a copy of the
23 agreement she signed at the GOB facility. Her
24 hours on this state 7 a.m. to 4 p.m., Monday
25 through Friday, are the hours of operation.

1 Hazell did recognize the Attachment E, which the
2 hours of operation are indicated on the agreement.
3 She said the signature that was on the Attachment
4 E was not hers, but she would take my word for it.
5 I told -- I also told her that she needed to keep
6 the facility open at 4 p.m., because she did ask
7 about closing at 3:30.

8 Q What do you mean, she asked about closing at 3:30?

9 A Well, she -- she wanted to inquire, because she
10 was having slow business between 3:30 and 4, and
11 was wondering if she could close it --

12 Q So generally, she wanted to close at 3:30?

13 A That's correct.

14 Q Okay.

15 A And I did tell her no, that she could not do that
16 per her agreement. I asked her why she was
17 closing at 10:30 to 11 a.m., and she stated she
18 needed time to get -- to prepare for lunch. I
19 told her that she could not do this per her
20 agreement, and because she could be -- lose
21 potential sales as well, and that Hazell must
22 understand that she needs to remain open from the
23 hours of 7 a.m. to 4 p.m., Monday through Friday,
24 except State holidays, and she needs to
25 understand that she can't close any time during

1 these hours of operation. Hazell also requested
2 that I send her a copy of the email that I
3 received from the tenant regarding her closing,
4 and she said I could do this without submitting
5 the individual's name.

6 Q Okay. And did you send that email to her?

7 A I did.

8 Q Okay.

9 A I believe it was a couple of days later, if I --

10 MS. SCHMIDT: Okay. I move to admit
11 Petitioner's Exhibit Three.

12 ALJ MEADE: All right, we'll accept
13 Exhibit Three into the Record.

14 (WHEREUPON, Petitioner's Exhibit Number
15 Three was admitted at this time.)

16 BY MS. SCHMIDT:

17 Q I'm handing the Witness what's been labeled as
18 Petitioner's Exhibit Four.

19 A Thank you.

20 Q Can you identify this document?

21 A It is an Operator Case Bill (sic).

22 Q And you had just stated that Ms. Hazell Brooks
23 asked you to send her the email that you got
24 complaining about the hours of operation, and you
25 said that you would, and so is this what --

1 A Yeah.

2 Q -- the email is that you sent to Hazell?

3 A Right, and then I put a case note after -- after I

4 had sent it --

5 Q I see, okay.

6 A -- to her, mm-hmm.

7 Q All right, because the case note is dated, your

8 Exhibit Number Three is dated 8/27, and I see you

9 sent this to her on 8/26.

10 A Yes.

11 Q So, is it possible that you wrote the site visit,

12 perhaps it was after -- it was the day after?

13 A Yes. Yes, it looks like the 29th, I sent the

14 email to Hazell Brooks.

15 Q Okay. And I see that on your original message on

16 the bottom it's -- you blanked out the "from"?

17 A Yes.

18 Q Okay. So, it's identical to the message on

19 Exhibit Two, but you took out Patty Curtis's name?

20 A That is correct.

21 Q All right. Now have you gotten other complaints

22 about the hours that Ms. Brooks kept?

23 A Yes, I did, from a building manager.

24 Q Okay, I'm hand -- oh, I'm sorry.

25 MS. SCHMIDT: I move to admit

1 Petitioner's Exhibit Four.

2 ALJ MEADE: All right, we'll accept

3 Exhibit Four into the Record.

4 (WHEREUPON, Petitioner's Exhibit Number

5 Four was admitted at this time.)

6 BY MS. SCHMIDT:

7 Q I'm handing the Petitioner (sic) what's been

8 labeled as Petitioner's Exhibit Five. And, is

9 that familiar to you?

10 A It is.

11 Q And what is this?

12 A This is an Operator Case Note. I would usually

13 enter these if I had talked with the building

14 manager or if there was an equipment issue,

15 something that deals with comments, I guess not

16 directly related to an operator, but I would enter

17 something like this.

18 Q Okay. What makes this an Operator Case Note?

19 A Just that I did receive a call from Karin Carver,

20 the building manager, stating that Hazell Brooks

21 was closed again, and I entered it as a Case Note.

22 So I heard from the building manager regarding --

23 Q Okay.

24 A -- regarding her closing.

25 Q And it's also -- is it also a Case Note because

1 you had wanted to document that you dropped off
2 the --

3 A Yeah. Yes, I did that at the same time.

4 Q Okay. And Karin Carver, that was on September
5 15th that she left you the message?

6 A Yes, that's correct.

7 Q Okay. Now, what's the significance of an operator
8 keeping to the hours that are identified in the
9 agreement that they wrote, that they signed when
10 they first got their license?

11 A It's imperative.

12 Q Why is that?

13 A We're dealing with customers. Hours should be
14 posted, and this is an opportunity for the
15 operators as well to -- to have potential
16 business. You know, whether you're getting ready
17 for lunch or not, I mean there is -- there is
18 potential sales there. It doesn't look good on
19 the Commission or the operator when an operator
20 closes the facility, when they have set hours to
21 run their operation.

22 Q Okay. Now, are there any rules for the -- that
23 identify the reasons for which a license can be
24 revoked?

25 A I -- to the best of my knowledge right now, I do

1 not have any rules in front of me, just adhering
2 to the agreement itself.

3 Q Okay. Does Rule 15, does that sound familiar?

4 A Yes, it does.

5 MS. SCHMIDT: Okay, and I would like the
6 Judge to take judicial notice of Rule 393.15.
7 Rule 15, Section 1, says: "The Commission may
8 revoke a license issued to a blind person for the
9 operation of a vending facility on federal, state
10 or other property for any of the following
11 reasons," and "D" is: "Violation of the terms --"
12 I'm sorry, "E" states: "A violation -- violation
13 of the terms and conditions of the vending stand
14 agreement with the Commission."

15 ALJ MEADE: All right, I'll take notice
16 of that. And I don't know that we admitted
17 Exhibit Five, so I'll --

18 MS. SCHMIDT: I move to admit Exhibit
19 Five.

20 ALJ MEADE: All right, then I'll accept
21 Exhibit Five in the Record.

22 (WHEREUPON, Petitioner's Exhibit Number
23 Five was admitted at this time.)

24 BY MS. SCHMIDT:

25 Q Now, were there any other reasons that you

1 encountered, that would go towards the revocation
2 of Ms. Brooks' license?

3 A The computer.

4 Q Okay. I am handing the Witness, Petitioner's
5 Exhibit Number Six. Are you familiar with this
6 document?

7 A Yes, I am.

8 Q What is it?

9 A This would be a site visit regarding General
10 Office Building and the operator, Hazell Brooks,
11 and myself, Patrick Duthie.

12 Q And what is the subject of that?

13 A I -- I took the operator, a laptop computer --

14 Q Okay.

15 A -- and software, on August 5th, 2008.

16 Q And what's the purpose for giving her the
17 computer?

18 A At that time, the computer at that facility had
19 broken down, and the facility needed a new
20 computer.

21 Q Okay. And that was on August 5th, 2008?

22 A That is correct.

23 MS. SCHMIDT: All right, I move to admit
24 Petitioner's Exhibit Six.

25 ALJ MEADE: And Exhibit Six is accepted

1 into the Record.

2 (WHEREUPON, Petitioner's Exhibit Number
3 Six was admitted at this time.)

4 BY MS. SCHMIDT:

5 Q I am handing the Witness, Petitioner's -- what's
6 marked as Petitioner's Exhibit Seven. Is that
7 familiar to you?

8 A This is a familiar document.

9 Q And what is that?

10 A A Facility Case Note.

11 Q Okay. And the date of it?

12 A November 19, 2008.

13 Q All right. Can you tell us about the content of
14 that?

15 A This is when I called Ms. Brooks on the 14th of
16 November, mid afternoon, to make arrangements to
17 get her -- the laptop computer back for the
18 facility.

19 Q Okay. And why were you taking the laptop computer
20 back?

21 A Because the facility needed it, and it was not
22 hers.

23 Q Well, had her license been suspended at this time?

24 A That is correct.

25 Q I see, okay. And you state that she told you that

1 she made arrangements with Barbara Hunter to get
2 the computer?

3 A That is correct.

4 Q Okay. And who is Barbara Hunter?

5 A Barbara Hunter was the temporary operator who took
6 over at the GOB after the suspension of Hazell
7 Brooks at that facility.

8 Q Okay. And what other information do you have from
9 this one?

10 A Regarding the Case Note, I also asked her about
11 some software, to recover it, because I forgot to
12 ask about that.

13 Q So you wanted this computer and the software back?

14 A Soft -- correct.

15 Q Okay.

16 A It was a Microsoft Office software.

17 Q All right. Anything else?

18 A No. Uh, no.

19 Q Okay.

20 A There isn't.

21 Q All right. Is there -- so Barbara Hunter took
22 over the operation after Ms. Brooks' license was
23 suspended?

24 A Yes, I -- about a couple of weeks afterwards, yes.

25 Q And is she still there?

- 1 A No, she is not.
- 2 Q How long was she there?
- 3 A She was there from, I want to say, October of '08
- 4 to early November 2009.
- 5 Q Okay. And was she -- was it -- did she know that
- 6 that was going to be a temporary position?
- 7 A Yes, she did.
- 8 Q Okay. And then, have you gotten somebody in there
- 9 now?
- 10 A Yes, I did.
- 11 Q Okay. Who is that?
- 12 A Her name is Kelly Hampton (ph), also a temporary
- 13 operator.
- 14 Q And she is only the second person that's operated
- 15 it since Ms. Brooks' license -- license was
- 16 suspended?
- 17 A That is correct.
- 18 Q Okay. Now, on the day that Ms. Brooks was
- 19 suspended, were you present -- present when she
- 20 was approached to be informed that her license was
- 21 being summarily suspended?
- 22 A I was present, yes.
- 23 Q And was she asked to -- to make sure that she gave
- 24 the computer back?
- 25 A Yes, along with other property as well.

1 Q Okay. And did she ever bring the computer back?

2 A She did not.

3 Q And are you aware that she was asked for the
4 computer after her license was suspended?

5 A Yes.

6 Q And do you still not have the computer?

7 A I do not have the computer to this day.

8 Q Okay, thank you.

9 MS. SCHMIDT: I move to introduce -- to
10 admit into evidence Exhibit Six (sic).

11 ALJ MEADE: All right. Or Seven, I
12 think you mean.

13 MS. SCHMIDT: I'm sorry. Seven.

14 ALJ MEADE: Seven is admitted.

15 (WHEREUPON, Petitioner's Exhibit Number
16 Seven was admitted at this time.)

17 MS. SCHMIDT: And I would like the Judge
18 to take judicial notice again of Rule 15, 393.15,
19 (1)(D), which allows the -- a person's license to
20 be revoked for violation of the terms and
21 conditions of several rules, and a violation of
22 the terms and conditions of Rule 393.24 is one of
23 those, and that's Rule 24, and Rule 24 states
24 that: "Each licensee shall agree to do all of the
25 following," and one of those is "C" and that is

1 to: "Take no action in derogation of, or
2 inconsistent with, the title of the State of
3 Michigan to the vending facility equipment."

4 ALJ MEADE: All right.

5 BY MS. SCHMIDT:

6 Q Now, Mr. Duthie, is the laptop and the software
7 considered to be vending facility equipment?

8 A Yes.

9 MS. SCHMIDT: Okay, thank you. I have
10 no further questions.

11 ALJ MEADE: All right. Mr. Duthie,
12 thank you.

13 MR. DUTHIE: Thank you.

14 ALJ MEADE: You may have a seat. And
15 your next witness?

16 MS. SCHMIDT: Constance Zanger.

17 ALJ MEADE: All right. And, Ms. Zanger,
18 once you're seated, if you could state and spell
19 your full name for me.

20 MS. ZANGER: I'm Constance Zanger; C-O-
21 N-S-T-A-N-C-E, Zanger is Z -- as in zebra -- A-N-
22 G-E-R.

23 ALJ MEADE: And please raise your right
24 hand. Do you swear that the testimony you're
25 about to give will be the truth, the whole truth,

1 and nothing but the truth?

2 MS. ZANGER: I do.

3 ALJ MEADE: Thank you. Go ahead, Ms.
4 Schmidt.

5 CONSTANCE ZANGER

6 DULY SWORN BY THE JUDGE, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MS. SCHMIDT:

9 Q Ms. Zanger, are you employed by the State of
10 Michigan?

11 A I am.

12 Q And who are you employed by?

13 A I am employed by the Michigan Commission for the
14 Blind.

15 Q And what is your position with the Commission for
16 the Blind?

17 A I'm the manager of the Commission's Business
18 Enterprise Program.

19 Q Okay. And what is -- what does your job entail?

20 A Generally, my job is responsible to make sure that
21 we have a budget for the year, that funds are
22 spent appropriately -- excuse me -- appropriately.
23 To make -- to ensure that vending facilities and
24 opportunities for blind people are created and
25 preserved.

1 Q Okay. And do you have authority over the Business
2 Enterprise Program?

3 A I do.

4 Q And the Business Enterprise Program consists of
5 what?

6 A Under both Federal and State law, the Business
7 Enterprise Program has the right to provide food
8 service in federally-owned and occupied buildings
9 and in State-owned and occupied buildings. Those
10 food services can consist of: cafeterias, of
11 cafeteria combined facilities, snack bars and the
12 vending facility.

13 Q And do you oversee the promotional agents, or
14 what's your relationship with them?

15 A Up until about nine months ago, I did directly
16 oversee the responsibilities of promotional
17 agents. Since then, we have an assistant program
18 manager who directly oversees them.

19 Q And who is that?

20 A James Hall (ph).

21 Q Okay. And -- and what's the relationship with you
22 and James Hall? I mean, does James Hall consult
23 with you on a daily basis; does he keep you
24 apprised of what's going on with promotional
25 agents?

- 1 A I directly supervise James Hall and he does indeed
2 keep me apprised of what's going on, and we
3 consult on a daily basis.
- 4 Q Okay. Now, were you present when the Commission
5 staff approached Ms. Brooks with her notification
6 that her license was going to be summarily
7 suspended?
- 8 A No, I was not.
- 9 Q Okay. Were you present when she was given notice
10 of her license revocation?
- 11 A No, I was not.
- 12 Q Do you know how that license revocation notice was
13 conveyed to her?
- 14 A The license revocation notice was transmitted to
15 her both by certified mail and by regular U.S.
16 first class mail.
- 17 Q Okay. I am handing the Witness what's been marked
18 as Petitioner's Exhibit Eight. Now, are you
19 familiar with that document?
- 20 A I am.
- 21 Q And what is that document?
- 22 A This is the notification to Ms. Brooks that the
23 Commission was commencing proceedings to revoke
24 her license to operate a Business Enterprise
25 Program facility in the State of Michigan.

1 Q And the date of that is?

2 A The document is dated January 4th, 2009. However,

3 I notice on subsequent pages, the document is

4 dated January 4th, 2010.

5 Q Does it make any difference which date, in your

6 mind, and do you know which date it was done?

7 A It was done in January 2010.

8 Q Okay. So, it was sent on January 4th, 2010?

9 A Yes.

10 Q All right. Now, does this license revocation

11 notice give the reasons for which her license was

12 being revoked?

13 A Yes.

14 Q All right. And if --

15 MS. SCHMIDT: I would like to move to

16 introduce Petitioner's Exhibit -- is it Nine?

17 ALJ MEADE: Eight.

18 MS. SCHMIDT: -- Eight.

19 ALJ MEADE: I'll accept Exhibit Eight

20 into the Record.

21 (WHEREUPON, Petitioner's Exhibit Number

22 Eight was admitted at this time.)

23 BY MS. SCHMIDT:

24 Q Can you just briefly go down the list of the

25 reasons for which her license was revoked?

1 A Mm-hmm. The letter cites the rules that the
2 Commission believes Ms. Brooks violated. We used
3 the suspension of Ms. Brooks' license as one of
4 the reasons for the license revocation, because
5 she violated the State Code of Conduct on --
6 excuse me -- the Department of Management and
7 Budget's Code of Conduct for behaving on State
8 property.

9 Q Okay. And let me ask you this -- I'm looking at
10 Rule 15, which has the reasons for which a person
11 has -- for which a license can be revoked for an
12 operator and -- excuse me just for one moment
13 while I find the right one -- oh yes, it -- oh,
14 I'm sorry, this is Rule 24, the licensee
15 obligations, and Rule 24(1)(N) is that: "Each
16 licensee agrees to do all the following: (N)
17 "Comply with all applicable federal state laws and
18 regulations, including tax laws." And, so is that
19 what you're talking about when you say that, you
20 talk about her conduct on State property?

21 A Okay.

22 Q Okay. And were there -- there's DMB rules that
23 speak to the allowable conduct on State property?

24 A Yes.

25 MS. SCHMIDT: And I would like to take

1 judicial notice of the fact that in the ALJ's
2 recommendation, which was adopted by the
3 Commission, that the ALJ determined that Ms.
4 Brooks -- and I quote from Page 12 -- "Ms. Brooks'
5 conduct on September 8th, 2008 violated the
6 Administrative Rules regarding conduct on State's
7 property."

8 BY MS. SCHMIDT:

9 Q And there -- what are the other reasons for which
10 her license was revoked?

11 A Ms. Brooks was not keeping her hours of operation
12 at her vending facility in which the Vending
13 Facility Agreement, she committed to keeping the
14 hours of operation identified in that agreement.

15 Q And anything else?

16 A That the Commission for the Blind purchased a
17 laptop computer for the vending facility and when
18 Ms. Brooks' license was suspended, that laptop
19 computer was no longer at the facility. That's
20 State of Michigan property that needs to be
21 returned, and as of this date it's not yet been
22 returned.

23 Q Okay. And anything else?

24 A That licensees are responsible to meet a certain
25 profit expectation that has been established

1 jointly by the Michigan Commission for the Blind
2 and the Business Enterprise Program and the
3 licensed operators.

4 Q All right. Now, do you have any personal
5 knowledge regarding the profit percentages?

6 A I do.

7 Q Okay. I'm handing the Witness what has been
8 labeled as Petitioner's Exhibit Nine. Can you
9 identify that document?

10 A This is a summary of a Profit Percentage
11 Expectation Exception Review requested by Ms.
12 Brooks.

13 Q And how are you familiar with this document?

14 A Subsequent to the review meeting, I received a
15 copy of this document, and in preparation for
16 subsequent meetings on this topic, I reviewed this
17 document.

18 Q Okay. And is there a meeting that took place on
19 May 7, 2007?

20 A There was a meeting that took place on May 7th,
21 2007. And again, the meeting was commenced at Ms.
22 Brooks' request. The meeting was recorded, and
23 the summary was written by the Business Enterprise
24 Program Secretary, Lucy Edmonds.

25 MS. SCHMIDT: Okay. I move to admit

1 Petitioner's Exhibit Nine.

2 ALJ MEADE: All right, we'll accept

3 Exhibit Nine into the Record.

4 (WHEREUPON, Petitioner's Exhibit Number

5 Nine was admitted at this time.)

6 BY MS. SCHMIDT:

7 Q Okay. The first paragraph of that identifies the

8 people who were present at that meeting.

9 A Yes.

10 Q And I just want to go through those, so we know

11 who was there.

12 A Sure.

13 Q Who is Lucy Edmonds?

14 A She is the Business Enterprise Program Secretary.

15 Q So she -- did she --

16 A She recorded the meeting and summarized the

17 meeting.

18 Q Okay. And who is David Robinson?

19 A David Robinson was Ms. Brooks' promotional agent

20 at the time.

21 Q Okay. And Cherie Heibeck?

22 A Cherie Heibeck, at the time of this meeting, was

23 the program manager, the Business Enterprise

24 Program Manager.

25 Q So you have her job now?

- 1 A I do.
- 2 Q Okay. And then, Ms. Brooks was there?
- 3 A Mm-hmm.
- 4 Q And also, this Garnet Prentice, who is that?
- 5 A Garnet Prentice is a member of the Elected
- 6 Operators Committee, and her specific role at this
- 7 meeting was as the Chair of the Promotions and
- 8 Seniority Subcommittee. When we conduct these
- 9 profit percentage expectation exception reviews,
- 10 it is our practice to have the Chair of the
- 11 Promotions and Seniority Subcommittee present to
- 12 consult and advise, as well as the Chair of the
- 13 Elected Committee.
- 14 Q Okay. And what is the Elected Operators
- 15 Committee?
- 16 A The Randolph-Sheppard Act mandates that every
- 17 Business Enterprise Program have an Elected
- 18 Committee of Operators that actively participate
- 19 with the agency in developing policy.
- 20 Q Okay. And is one of their roles to support the
- 21 operators when they have problems with the agency?
- 22 A Absolutely.
- 23 Q Okay. Now, can you just summarize what happened
- 24 at this meeting?
- 25 A Ms. Brooks requested this meeting after she'd been

1 in her new business, the General Office Building
2 Café combined facility.

3 Q Excuse me, let me -- I need to go back just one --

4 A Certainly.

5 Q -- one step and that is, what is a license profit
6 expectation, before we go any further?

7 A Licensees are expected to maintain a parti -- a
8 particular profit percentage expectation. The
9 expectation varies by facility type, so for
10 example, a cafeteria is expected to maintain 11%
11 profit percentage expectation; a snack bar, 25%.
12 Ms. Brooks was in a cafeteria combined facility,
13 and the expectation was 17%. This expectation is
14 a general indicator of the business health.

15 Q Why is important for them to keep to that profit
16 expectation?

17 A Well, a Business Enterprise Program licensee earns
18 their living from the income they receive from
19 this business, so certainly we want the business
20 to be as healthy as possible, so that the operator
21 receives the greatest possible reward, or income
22 from the business. The Commission for the Blind
23 is also responsible to maintain this facility, and
24 we want the business to be healthy, not only for
25 the individual operator, but for all future

1 operators that might come into that facility.

2 Q Okay. And are those profit expectations for each
3 type of vending facility set forth in the law?

4 A They are established in the promulgated rules.

5 MS. SCHMIDT: Okay. Then I would ask
6 the Judge to take judicial notice of Rule 30,
7 that's Rule 393.30 which states, in number 1, "A
8 licensee shall maintain the profit expectations
9 established in this rule," and it lists each type
10 of facility and what the profit expectation is.
11 And in 1(E) it says, "Combined cafeteria/snack
12 bar, 17% profit expectation."

13 ALJ MEADE: All right, I'll take notice
14 of Rule 30.

15 BY MS. SCHMIDT:

16 Q And, Ms. Zanger, it does say, "Combined
17 cafeteria/snack bar." Can you tell me why Ms.
18 Brooks, her operation fell under that 17% profit
19 expectation?

20 A Ms. Brooks' vending facility operation at the
21 General Office Building contained the
22 characteristics of both the cafeteria and the
23 snack bar, so while there was a traditional
24 cafeteria operation with hot food service and
25 seating, it also provided traditional snack items,

1 such as, you know, sweet and salty snacks. And, a
2 third component would have been the machines that
3 were in the vending facility.

4 Q Okay. So, back to Petitioner's Exhibit Nine, can
5 you tell me what the subject of that meeting was,
6 and what the result was?

7 A Mm-hmm. After Ms. Brooks had been in her facility
8 for only three months, she was concerned that she
9 was not going to be able to meet her profit
10 expectation. It was her judgment that she needed
11 to invest her own personal money in the business
12 at that point, and she was unable to meet her
13 profit expectation. When this was presented to
14 the group listing -- you know, the review group --
15 they discussed it and determined that temporarily,
16 they would readjust her profit percentage
17 expectation down to 11%.

18 Q Okay. In which you -- oh, you were at the
19 meeting; right?

20 A No.

21 Q No? Okay, and attached to that first page is a
22 second page, and is there any relevant information
23 on the page that you would like to speak to?

24 A Certainly. The attachment is a spreadsheet that
25 summarizes the vending facility monthly report

1 submitted by Ms. Brooks for the month -- month of
2 February 2007, March 2007 and April 2007. Ms.
3 Brooks came into the facility early in February,
4 although not right at the first of the month. I
5 believe she operated it for maybe about two weeks.
6 The February report is unusual in that she reports
7 having three employees but no employee wages, I
8 would suspect that that was because Vocational
9 Rehabilitation Program compensated her for those
10 wages in an effort to help her get her business
11 started.

12 Q So, the consequence -- in the column where it
13 says, "Total employee costs," for February it was
14 0?

15 A Mm-hmm.

16 Q So, then would that enhance, then, her profit
17 percentage when this all --

18 A That certainly enhanced her profit percentage,
19 because employee wages are expected to be about
20 40% of your total sale.

21 Q Okay. So then, in March, she had a profit
22 percentage of .85%?

23 A She did.

24 Q And in April, it was 17.32%?

25 A It was.

1 Q So was that satisfactory?

2 A It was satisfactory in April, yes.

3 Q Okay. I'm handing the Witness what's been labeled

4 as Petitioner's Exhibit Ten. Are you familiar

5 with this document?

6 A I am.

7 Q And what is it?

8 A This is a followup Profit Percentage Expectation

9 Exception Review conducted on September 18, 2007.

10 MS. SCHMIDT: The Petitioner moves to

11 admit Exhibit Ten.

12 ALJ MEADE: All right, we'll accept

13 Exhibit Ten into the Record.

14 (WHEREUPON, Petitioner's Exhibit Number

15 Ten was admitted at this time.)

16 BY MS. SCHMIDT:

17 Q All right. Now, so this is another review, and

18 you were present at this one. I see it states

19 persons present.

20 A Yes.

21 Q Okay. And then, can you identify Rob Esenberg

22 (ph)?

23 A Rob Esenberg was the Chair of the Elected

24 Committee at the time.

25 Q And Garnet Prentice?

1 A Garnet Prentice was the Chair of the Promotions
2 and Seniority Subcommittee at that time.

3 Q And David Robinson?

4 A David Robinson was Ms. Brooks' promotional agent
5 at the time.

6 Q Okay. And then, Ms. Brooks was there?

7 A Yes.

8 Q And Lucy Edmonds?

9 A Yes.

10 Q Yeah, so it was the same people that were there on
11 May 7th, except for Cherie, you were there instead
12 of Cherie Heibeck?

13 A And Rob Esenberg attended.

14 Q Oh, okay. So, this is what, four months later
15 then? The first one was May 7th, now we're
16 looking at September 18th.

17 A Yes, we are.

18 Q And what was going on in that review?

19 A Ms. Brooks was requesting that her reduced profit
20 percentage expectation be continued for an
21 extended period of time. She felt that she had
22 some transient issues to deal with that was
23 causing her -- that were causing her to not be
24 able to meet her profit percentage expectation.

25 Ms. Prentice and I asked Ms. Brooks some business-

1 related questions, and we identified some business
2 practices that Ms. Brooks needed to improve.

3 Q Okay. And what were some of those?

4 A Ms. Brooks appeared to have stopped taking her
5 monthly inventory. It was her response, that she
6 was taking them but simply not recording them. We
7 reiterated to her the importance of taking monthly
8 inventory, that that's a method of helping you
9 maintain a healthy business. We also noted that
10 her sales tax figures appeared to be incorrect,
11 that while she had widely varying amounts of sales
12 in two different months, she paid the same amount
13 of sales tax for each month. That appeared to be
14 incorrect.

15 Q Okay. And what's going on, I see that there is a
16 mention about a store that was being operated by
17 the Office of Retirement Services?

18 A Yes.

19 Q And is Office of Retirement Services one of the
20 tenants in the General Office Building?

21 A Yes.

22 Q Okay. What was going on there?

23 A The Office of Retirement Services has an employee
24 morale fund, and they had a small store whereby
25 one State employee purchased goods at a reduced

1 cost from Sam's or Meijer's, someplace, and
2 brought them in, and they sold them at a profit,
3 and the proceeds from that business were used for
4 fundraisers and -- or, excuse me, for charitable
5 events and employee morale activity.

6 Q Okay. Now, was that -- did Ms. -- okay, did that
7 present unfair competition for Ms. Brooks, for her
8 cafeteria?

9 A Yes.

10 Q Okay. And what was -- did she file a grievance
11 about that?

12 A Ultimately, Ms. Brooks did indeed file a grievance
13 and --

14 Q Okay.

15 A -- around the time that Ms. Brooks filed a
16 grievance, the Business Enterprise Program manager
17 and the promotional agent went directly to the
18 Office of Retirement Services and discussed with
19 them this practice of running a fundraising store.
20 After a couple of meetings, we got the Office of
21 Retirement Services to agree to discontinue the
22 store's function. The agreement was based on Ms.
23 Brooks selling the kinds of food items in her
24 cafeteria that would -- had been sold in the ORS
25 store.

1 Q Okay.

2 A Ms. Brooks -- excuse me.

3 Q Did Ms. Brooks have a hearing --

4 A Ms. Brooks?

5 Q -- on this grievance?

6 A Yes, Ms. Brooks did indeed have a hearing on this

7 grievance, and that it was the recommendation of

8 the Administrative Law Judge, which was adopted by

9 the Commission Board, that ORS should discontinue

10 that store operation, which did indeed happen.

11 The Administrative Law Judge also recommended that

12 the agency develop a position paper about

13 fundraising activities in the State building.

14 Q Okay. And so after the Commission adopted the

15 ALJ's recommendation, did the GOB store get closed

16 down?

17 A It was closed down.

18 Q Okay. And did -- to your knowledge, did Ms.

19 Brooks then start selling the items that she felt

20 were causing her competition, the items that were

21 being sold by the ORS?

22 A Ms. Brooks admitted to me that she was not selling

23 those items.

24 Q Okay. So, the consensus was that she would, on

25 this September 18th, 2007 review, that she would

1 -- she had to -- it was, she had to maintain 17%?

2 A Yes.

3 Q Okay.

4 A The group decided that she had clearly
5 demonstrated that a 17% profit percentage
6 expectation was reasonable for the facility and
7 that she should continue to work for that.

8 Q Okay. Now there is an attachment to this review.

9 A Yes.

10 Q And is there any relevant information that you
11 wanted to point out on that?

12 A Mm-hmm. This is a summary, again, of the vending
13 facility reports that Ms. Brooks submitted to the
14 Commission for the Blind. There is a report, or a
15 summary report here for each of the months of
16 February, March, April, May, June, July and August
17 of 2007. On the left side, closer to the bottom,
18 it identifies Ms. Brooks' profit percentage
19 expectation for each of those months. There are
20 seven months there, and in all but one -- excuse
21 me -- all but two months, Ms. Brooks met or
22 exceeded her profit percentage expectation.

23 Q Okay. But, so do you still take seriously when
24 there is only -- you know, when you have something
25 like this, where there is only a couple of months

- 1 that they -- that the operator didn't make it?
- 2 A We certainly do. First of all, because the
- 3 operator is asking for assistance in this area,
- 4 and we make sure, you know, to provide the best
- 5 business advice that we can in conjunction with
- 6 the Elected Committee. It also causes us to
- 7 review the spreadsheets for the monthly report and
- 8 note where her reports don't appear to be
- 9 accurate, or correct.
- 10 Q Okay. And after a certain amount of assistance is
- 11 given, then isn't it expected that they must meet
- 12 the expectation agreement?
- 13 A Absolutely.
- 14 Q Okay. I am handing the Witness, Petitioner's
- 15 Exhibit Eleven. Okay, and are you familiar with
- 16 this document?
- 17 A I am.
- 18 Q And what is this document?
- 19 A This is a summary of the third profit percentage
- 20 expectation exception review conducted for Ms.
- 21 Brooks.
- 22 Q And the date?
- 23 A The date is March 27, 2008.
- 24 Q So, let's see, it's approximately six months later
- 25 from the September 18th one?

1 A Yes.

2 Q Okay. And present at that meeting were you --

3 A Yes.

4 Q -- and Patrick Duthie?

5 A Yes.

6 Q And why was Patrick Duthie there?

7 A Patrick Duthie had been assigned to be Ms. Brooks'

8 promotional agent.

9 Q Okay. And Robert Esenberg?

10 A Robert Esenberg was the Chair of the Elected

11 Committee at the time.

12 Q Okay. And Gail Jones?

13 A Gail Jones was the secretary for the Elected

14 Committee, and she recorded the meeting and

15 provided the summary.

16 Q And then, Ms. Brooks attended by telephone

17 conference?

18 A Yes.

19 Q And then, Garnet Prentice?

20 A Garnet Prentice was the Chair of the Elected

21 Committee, Promotions and Seniority Subcommittee.

22 Q All right. And Mike Barnes (ph)?

23 A Mike Barnes was Ms. Brooks' accountant.

24 Q I see. And, you mean -- do operators hire

25 accountants; is it someone that she would hire?

1 A Yes, Ms. Brooks hired Mr. Barnes to be her
2 accountant for the business.

3 Q Okay. Now, so what took place in that review?

4 A Again, the Review Committee discussed Ms. Brooks'
5 business. Mr. Esenberg, the Chair of the Elected
6 Committee, noted that there were some
7 discrepancies in the amount of Ms. Brooks'
8 withholding. Her accountant responded that he
9 received this account from someone else, and he
10 was working to get those issues straightened out.
11 We reviewed the results of the recent case before
12 the Administrative Law Judge regarding the ORS
13 store, and we noted that our office was in the
14 process of developing the recommended position
15 paper. Ms. Brooks said she planned to cut the
16 employees' hours until her business increased.
17 Ms. Brooks also committed to putting products that
18 were currently sold in our ORS store in her
19 vending facility, but while she had originally
20 made that commitment, she said that she wasn't
21 willing to take any risks right now, so she was
22 introducing those products slowly due to a
23 boycott.

24 Q So for some reason, she considered putting in the
25 products that were sold in the ORS store --

1 A Yes.

2 Q -- as taking a risk that she didn't want to take?

3 A Yes.

4 Q Okay. Even though she considered that the

5 products that the ORS store sold as competition?

6 A Yes.

7 Q Correct?

8 A Yes.

9 Q All right. Anything else on that review?

10 A Um, we decided -- the group decided that we would

11 remain -- keep her expectation at 17% and wait to

12 see what Ms. Brooks reported to be a boycott,

13 impacted on her sales.

14 Q And what -- what was the boycott that she was

15 (inaudible)?

16 A Ms. Brooks believed that employees in the General

17 Office Building were boycotting, or not

18 patronizing her vending facility because she had

19 taken a firm stand on the ORS store, and she

20 thought that they were retaliating against her

21 firm stand by not patronizing her business.

22 Q Okay. Now, are there several tenants at the GOB?

23 A There are indeed several tenants. I'm aware that

24 the Office of Retirement Services in that

25 building, is in that building; Reproduction

- 1 Services is in that building; (inaudible) has
2 their mail room and their accounting offices in
3 there; Bureau of Workers' Disability Compensation
4 is in there, and the Bureau -- I don't know who
5 else is in that building.
- 6 Q I'm not all familiar with that complex, but is it
7 fairly isolated -- isn't it fairly isolated?
- 8 A It is fairly isolated. There is -- at the time,
9 there was a (inaudible) across Old Lansing Road,
10 which is a four-lane divided highway. Down the
11 road is, may be a Wendy's and Arby's. If you wish
12 to travel to the Lansing Mall for food, it takes
13 about 20 minutes to travel to the Lansing Mall.
- 14 Q So would you say that Ms. Brooks' cafeteria and
15 vending machines are probably the most convenient
16 for all the employees in that building?
- 17 A They are absolutely the most convenient.
- 18 Q And did you have any personal information that
19 there indeed was a boycott going on?
- 20 A I did not have any personal information. I only
21 had Ms. Brooks' report.
- 22 Q Okay. Did you ever hear anybody else say that
23 there was a boycott going on?
- 24 A Not that I recall.
- 25 Q Okay. Now looking at -- oh, I see this is a two-

1 sided page. Is there any information on the
2 second page there?

3 A We discussed, at some length, the revenue from her
4 vending machine. She had nine vending machines in
5 that facility. Vending machines are a big boost
6 to cafeteria operation because they're not labor-
7 intensive and they're available to customers 24
8 hours a day, seven days a week, and we wanted to
9 know what percentage of her Vending Facility
10 Agreement -- excuse me -- vending facility income
11 came from those vending machines.

12 Q Okay. And did she know that?

13 A She did not know that. She said that she would
14 provide that information to us at a later time.

15 Q And did she?

16 A No, she did not.

17 Q And I see there is a statement here that "Rob told
18 the accountant we should look at withholding
19 figures because they seemed inaccurate"?

20 A Yes.

21 Q All right. Now looking at the attachment, is
22 there anything that you would like to point out on
23 that?

24 A I would. There are still several months where Ms.
25 Brooks was not meeting her profit percentage

1 expectation and, in fact, in one month she
 2 reported a negative income of \$2,000.

3 Q Is that September of '07?

4 A It is September of '07.

5 Q Okay. So for that, from March '07 to February
 6 '08, we have how many months there of not meeting
 7 17%?

8 A Despite the recommendation of the Review Panel,
 9 there are still five months where Ms. Brooks did
 10 not achieve the 17% expectation.

11 Q Okay, thank you.

12 A You're welcome.

13 Q I am handing the Witness, Petitioner's Exhibit
 14 Twelve.

15 ALJ MEADE: All right, and I'll accept
 16 Exhibit Eleven, if I didn't already state that.

17 MS. SCHMIDT: Sorry. Thank you.

18 (WHEREUPON, Petitioner's Exhibit Number
 19 Eleven was admitted at this time.)

20 BY MS. SCHMIDT:

21 Q And are you familiar with this document?

22 A I am.

23 Q And what is it?

24 A It's a summary of the fourth profit percentage
 25 expectation exception review for Ms. Brooks.

1 Q And the date?

2 A The date of the meeting was July 7th, 2008.

3 Q So it's three to four months after the previous

4 one?

5 A Yes.

6 Q And the people present: Ms. Brooks was present;

7 Bill Myers, who is he?

8 A Bill Myers was the Chair of the Elected Committee

9 at the time.

10 Q And Patrick Duthie?

11 A The promotional agent.

12 Q And you?

13 A Yes.

14 Q And Michael Barnes?

15 A Ms. Brooks' accountant.

16 Q And Garnet -- Laurel (ph) Prentice?

17 A Yes.

18 Q Is she the same as Garnet Prentice?

19 A She is.

20 Q Oh.

21 A She was the Chair of the Committees, Promotions

22 for Seniority Subcommittee at the time.

23 Q All right. And what was the discussed at this

24 review?

25 A Patrick Duthie had provided an Excel spreadsheet

1 that summarized Ms. Brooks' monthly report for the
2 past 12 months, and he included several other
3 calculations on that spreadsheet, including:
4 comparing her other allowable expenses to sale,
5 her purchases to her sales; comparing her employee
6 wages to her sales. And, that was (inaudible)
7 information to Ms. Brooks, she had not been
8 keeping track of those business indicators. Ms.
9 Brooks also noted that she has a disagreement with
10 the amount of the inventory that had been assigned
11 to her vending facility about 18 months prior.

12 Q Okay. And what is the issue about inventory? How
13 does that work, when a new operator takes -- takes
14 over a previous --

15 A -- vending facility. At the time Ms. Brooks went
16 into her vending facility, the policy was to
17 provide for each operator two weeks' worth of
18 purchases. So, for the operator who is leaving
19 the vending facility we summarize, or add together
20 their purchases for 12 months and divide that by
21 26, to give us a two-week inventory. Ms. Brooks
22 had a misunderstanding, that her inventory would
23 be \$4,500 more than the assigned level, and in a
24 subsequent communication to her, I explained to
25 her how her inventory level was calculated, and

- 1 she seemed to be satisfied with that explanation.
- 2 Q Oh, okay. So, and that wasn't a problem, she
- 3 seemed satisfied with that?
- 4 A Mm-hmm.
- 5 Q All right. Anything else relevant to her
- 6 percentages in that review?
- 7 A Um, we had asked Ms. Brooks in an earlier review
- 8 to be more careful and more astute about
- 9 conducting her inventories, and based on the
- 10 information that we had at this time, it was clear
- 11 that she was not paying attention to that
- 12 important business practice, although she said she
- 13 was going to start again with that, but we still
- 14 had not received the information about the vending
- 15 sales that we had requested from her. So, we
- 16 reviewed her business practices and again
- 17 requested that she provide that vending machine
- 18 information and continue the profit percentage
- 19 expectation at 17%.
- 20 Q Okay. And then, at the very end, I see that the
- 21 Commission is asking to see vending machine sales
- 22 separated from café sales?
- 23 A Yes.
- 24 Q Separated out on her monthly reports?
- 25 A Yes.

1 Q Oh, okay. And just for the Record, what is a
2 monthly report?

3 A A monthly report is a summary of a vending
4 facility's business, and an operator is
5 responsible to submit that to the Commission after
6 the close of each month. It identifies purchases
7 -- excuse me -- it identifies sales for the
8 facility; identifies their purchases; the amount
9 that is for other income that's brought in, for
10 example, from newspapers or for catering; it
11 records the amount of supplies; it records
12 employee wages, and (inaudible) its associated
13 employer responsibilities, as well as other
14 allowable expenses.

15 Q So, on the spreadsheet that's attached to this
16 exhibit, would you like to point anything out on
17 this one?

18 A I would note that Ms. Brooks continues to be
19 inconsistent with her profit percentage
20 expectation, and is not consistently meeting the
21 standard and, in fact, for the last three months
22 of the -- excuse me -- the last three months, on
23 monthly reports summarized on the sheet, she still
24 is not quite at 17%.

25 Q Okay. Did we have a spreadsheet for -- well, this

1 one is dated in July, and I see that the
 2 spreadsheet goes up to March '08.
 3 A Yes.
 4 Q Was there a spreadsheet that would -- further than
 5 that, that you're aware of?
 6 A I believe there was, yes.
 7 MS. SCHMIDT: Judge, what I'm going to
 8 do is see if I can find that spreadsheet.
 9 ALJ MEADE: Okay.
 10 MS. SCHMIDT: And see whether or not we
 11 feel that it should be admitted.
 12 ALJ MEADE: All right.
 13 MS. SCHMIDT: And just going to move to
 14 admit Exhibit Number Twelve.
 15 ALJ MEADE: All right, we'll accept
 16 Exhibit Twelve into the Record.
 17 MS. SCHMIDT: Thank you.
 18 (WHEREUPON, Petitioner's Exhibit Number
 19 Twelve was admitted at this time.)
 20 BY MS. SCHMIDT:
 21 Q I'm handing the Witness, Petitioner's Exhibit
 22 Thirteen. Are you familiar with this document?
 23 A I am.
 24 Q And what is it?
 25 A I received a telephone call from an employee in

1 the Bureau of Workers' Disability Compensation,
2 and that BWDC employee --

3 Q And does she work in the GOB?

4 A Yes, she does.

5 Q Okay.

6 A She expressed her dissatisfaction with Ms. Brooks'
7 operation of the General Office Cafeteria.

8 Q And what was the date of that?

9 A June 4th, 2008.

10 Q Okay. And what were her concerns?

11 A Ms. Brooks -- excuse me -- the Workers' Comp
12 employee was dissatisfied with the snacks that Ms.
13 Brooks was offering at her vending facility, and
14 she asked if she could purchase snacks for her
15 staff and set them out for them to purchase at
16 whatever they felt like paying, something like the
17 ORS store. I told her no, mentioning the ALJ's
18 recommended decision, the pending position paper.
19 She also asked, because they weren't satisfied
20 with the snacks that were provided at the
21 cafeteria, if she could purchase snacks for her
22 staff and just make them available at no cost, and
23 I agreed that she could do that.

24 She was dissatisfied with the hours of
25 operation; the food line shuts down at 1 o'clock,

1 and she has employees who like to have hot food
2 for a while after 1 o'clock. And she told us that
3 the cafeteria is closing at 3 p.m., so it's
4 difficult for employees to get snacks between 3
5 and 6 p.m. Her agreement calls for her to be in
6 operation until 4 p.m.

7 Q And does -- is it okay that she shuts down the
8 food line of the cafeteria at 1 p.m., though?

9 A If -- if she were -- if she wanted to do that, she
10 should have discussed that with her promotional
11 agent and they would have probably not shut it
12 down at 1 o'clock, perhaps at 1:30 or 2.

13 Q Okay. And this employee was saying that the café
14 closes at 3; that was one of her complaints, that
15 it closed at 3 p.m.?

16 A Yes.

17 Q And that was definitely impermissible according to
18 the Vending Facility Agreement?

19 A Right. That violates the Vending Facility
20 Agreement.

21 Q And what else did she report?

22 A She found it difficult to communicate with Ms.
23 Brooks. She reported that they were often finding
24 outdated products in the vending machine and in
25 the cooler in the cafeteria. She had concerns

1 about sanitation practices. And again, she
2 expressed her concern that the variety of snacks
3 was limited, and they said -- she said that
4 product -- product pricing wasn't always
5 consistent.

6 MS. SCHMIDT: Okay. I move to introduce
7 Petitioner's Exhibit Thirteen into evidence.

8 ALJ MEADE: And Thirteen is accepted
9 into the Record.

10 (WHEREUPON, Petitioner's Exhibit Number
11 Thirteen was admitted at this time.)

12 MS. SCHMIDT: Judge, I just wanted to
13 have the Judge take judicial notice of another
14 rule. I'm not sure I connected up Rule 30
15 relative to the identification of the licensee
16 profit expectation, I didn't -- I don't think I
17 hooked that up with the fact that it's grounds for
18 revocation. And Rule 15, 393.15 states that: "The
19 Commission may revoke a license for any of the
20 following reasons" and (D) is: "A violation of the
21 terms and conditions of" and it lists several
22 rules, and one of them is Rule 393.30, and that is
23 Rule 30, the licensee profit expectation.

24 ALJ MEADE: All right, I'll take notice
25 of that.

1 MS. SCHMIDT: I have no further
2 questions.

3 ALJ MEADE: All right. Ms. Zanger,
4 thank you.

5 MS. ZANGER: You're welcome.

6 ALJ MEADE: And any other witnesses, Ms.
7 Schmidt?

8 MS. SCHMIDT: The Petitioner rests.

9 ALJ MEADE: All right. What I'll do is
10 prepare and issue a recommended decision, and you
11 should receive a copy of that within 30 days or
12 less.

13 MS. SCHMIDT: Thank you.

14 ALJ MEADE: Anything else for the
15 Record?

16 MS. SCHMIDT: No, thank you.

17 ALJ MEADE: No? Okay, we'll go off the
18 Record at 10:20.

19 (Proceedings concluded at 10:20 a.m.)

20 * * * * *

I hereby certify that this transcript, consisting of sixty-two (62) typewritten pages, represents the complete true and correct rendition of the recording of the proceedings and testimony taken in this case as recorded on May 5, 2010.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernable on the video of the proceedings.

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