

Capital Reporting Company

In the Matter of: 411 Dance Associates, LLC t/a Warehouse/Loft 10-17-2012

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DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :  
 :  
411 Dance Associates, LLC :  
t/a Warehouse/Loft :  
411 New York Avenue, NE :  
Retailer CX : Summary Suspension  
License No. 82667 : Hearing  
ANC 5B : (Status)  
Case No. 12-251-00307 :  
Chief of Police Closure :  
September 29, 2012 :  
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October 17, 2012

The Alcoholic Beverage Control

Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Washington, D.C., Ruthanne Miller, Chairperson, presiding.

PRESENT

RUTHANNE MILLER, Chairperson  
NICK ALBERTI, Member  
DONALD BROOKS, Member  
HERMAN JONES, Member  
CALVIN NOPHLIN, Member  
MIKE SILVERSTEIN, Member

ALSO PRESENT

FERNANDO RIVERO, OAG

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

2 10:34 a.m.

3 CHAIRPERSON MILLER: The next case on the  
4 calendar is 12-251-00307, Loft, located at 411 New York  
5 Avenue, N.E.

6 MR. RIVERO: Good morning, Board members.  
7 Fernando Rivero for the District of Columbia standing  
8 in for Assistant Attorney General Gephardt.

9 MR. FONSECA: Members of the Board, Michael  
10 Fonseca on behalf --

11 CHAIRPERSON MILLER: I'm sorry.

12 MR. FONSECA: -- on behalf of the Licensee.

13 CHAIRPERSON MILLER: I'm sorry. Wait a  
14 second. I'm very sorry. I didn't notice. This is a  
15 hearing -- show cause hearing?

16 MR. FONSECA: This is a status --

17 CHAIRPERSON MILLER: This is a status  
18 hearing?

19 MR. FONSECA: -- status on the summary  
20 suspension.

21 MS. JENKINS: Right.

22 CHAIRPERSON MILLER: Okay.

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1 MR. ALBERTI: Okay.

2 CHAIRPERSON MILLER: Okay. So I'm sorry.

3 MR. ALBERTI: All right. I thought -- all  
4 right.

5 CHAIRPERSON MILLER: All right.

6 MR. ALBERTI: It's not a summary suspension  
7 hearing?

8 MR. FONSECA: We'll explain.

9 MR. RIVERO: It's a status.

10 CHAIRPERSON MILLER: Okay.

11 MR. ALBERTI: Okay.

12 MR. RIVERO: And I actually don't have much  
13 to do.

14 MR. ALBERTI: I mean, what concerns me is the  
15 length of the hearing relative to how we're dealing  
16 with the other cases.

17 MR. RIVERO: well, we --

18 MR. ALBERTI: So --

19 MR. RIVERO: Well, it will be short. And we  
20 will --

21 MR. ALBERTI: Okay. Thank you very much.

22 MR. RIVERO: We'll be speaking as one.

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1 MR. FONSECA: Okay. I'll put it back on the  
2 record. Michael Fonseca on behalf of the Licensee.  
3 With me is its principal and the owner, Samuel Steward  
4 -- Steward with a, "D," not Stewart with a, "T."

5 CHAIRPERSON MILLER: Okay.

6 MR. FONSECA: Members of the Board, this was  
7 a summary suspension -- it is summary suspension. The  
8 license remains in summary suspension. When we  
9 initially requested the hearing, we had asked for it  
10 because of the Board's -- the impact on our summary  
11 suspension coming on a Wednesday that we'd have a  
12 status but we'd offer -- that we'd place with the Board  
13 an offer in compromise and then more likely have -- if  
14 that was declined by -- or rejected by the Board the  
15 summary suspension hearing tomorrow or Friday.

16 Within a matter of a couple of days after  
17 that pending consultation before I did this with the  
18 OAG with the -- with Ms. Gephardt -- Ms. Phillips was  
19 assisting her -- I notified the Board's general counsel  
20 that we would appear before the Board, saw that the  
21 Board would have an opportunity to question my client.  
22 But at this point there's been a constructive eviction

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1 that's occurred.

2           The lease term had expired. It had been on  
3 month-to-month. And the landlord rejected any  
4 entreaties to continuing the lease and effectively by  
5 constructive eviction, turned off the electricity. So  
6 part of what the OIC would have had was to come into  
7 compliance with a few items, which we were going to do,  
8 installation of a camera on the side door, correction  
9 on a number of fire code inspection items.

10           And because of the acts of the landlord --  
11 which frankly, since he's closed, he has little or no  
12 damages - - so, you know, suing under the circumstances  
13 where at the end there's -- it's not a continuing lease  
14 arrangement, you know, the business is effectively  
15 terminated. So we are here to not surrender the  
16 license because it's in the Board's possession, but to  
17 give notice to the Board the license should be  
18 cancelled.

19           Having done that, we did not want the Board  
20 not to have an opportunity, if it desired, to question  
21 the Licensee. But this matter is mooted out but we  
22 didn't want it to rest with the Board in such a way

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1 that it was just in writing. And I thought it was more  
2 important to come forward and let the Board understand  
3 the circumstances.

4 CHAIRPERSON MILLER: Okay. Questions?

5 MR. ALBERTI: I just wanted to make one  
6 remark, Mr. Steward. Mr. Steward, this incident  
7 brought to light some concern about the class of  
8 license that we had granted you. So what I want to say  
9 to you is that, if in the future you wanted to open  
10 another business in another location and apply for a  
11 license, just be prepared that the Board will be  
12 looking very closely at the class of license that is --  
13 that you're seeking.

14 And here you sought a CX license from --  
15 there's some evidence from -- in the record here that  
16 leads me to believe that maybe it should have been a  
17 CN. So -- but - - so the point is that if you come  
18 before us again, just be prepared to address the  
19 possible license you're seeking.

20 MR. FONSECA: We've had that discussion. I'd  
21 advised him of that. Another reason for this to come  
22 before the Board.

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1 MR. ALBERTI: Well, thank you.

2 MR. FONSECA: We do understand that. And for  
3 the record, if it was necessary, Mr. Steward was served  
4 with the notice of summary suspension, has read it and  
5 understands it. And we waive reading since there's not  
6 going to be a hearing -- not waiving a right to a  
7 hearing --

8 CHAIRPERSON MILLER: Right.

9 MR. FONSECA: -- we effectively have mooted  
10 this matter out.

11 CHAIRPERSON MILLER: Okay. Any other  
12 questions? Well, thank you for taking the time to come --

13 MR. FONSECA: Thank you.

14 CHAIRPERSON MILLER: -- and explain.

15 MR. FONSECA: Thank you.

16 CHAIRPERSON MILLER: Okay.

17 (WHEREUPON, at 10:39 a.m., the hearing was  
18 concluded.)

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1 CERTIFICATE OF NOTARY PUBLIC

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3 I, ERICK McNAIR, the officer before whom the  
4 foregoing hearing was taken, do hereby certify that the  
5 testimony appearing in the foregoing pages was recorded  
6 by me and thereafter reduced to typewriting under my  
7 direction; that said transcription is a true record of  
8 the testimony given by said parties; that I am neither  
9 counsel for, related to, nor employed by any of the  
10 parties to the action in which this hearing was taken;  
11 and, further, that I am not a relative or employee of  
12 any counsel or attorney employed by the parties hereto,  
13 nor financially or otherwise interested in the outcome  
14 of this action.

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ERICK McNAIR

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Notary Public in and for the

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District of Columbia

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22 My commission expires: July 14, 2016

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CERTIFICATE OF TRANSCRIPTION

I, MIRANDA PENNACHI, hereby certify that I am not the Court Reporter who reported the proceeding and that I have typed the transcript of the proceeding using the Court Reporter's notes and recordings. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

\_\_\_\_\_

Date

\_\_\_\_\_

MIRANDA PENNACHI

Transcriptionist

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