

Capital Reporting Company

In the Matter of: Island Cafe, Inc. 07-11-2012 - Summary Suspension Status Hearing

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DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :
 :
Island Cafe, Inc. :
t/a Island Cafe :
829 Upshur Street, NW :
Retailer CT : Summary Suspension
License No. 60578 : Status Hearing
ANC 4C :
Case No. 12-251-00104 :
Update from Licensee on :
Compliance with Board Order :
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July 11, 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

MICHAEL STERN, OAG

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

2 11:23 a.m.

3 CHAIRPERSON MILLER: Okay. We can now move
4 on now to Case No. 12-251-00104, Island Cafe. This is
5 a summary suspension status hearing. And the parties
6 would introduce themselves for the record.

7 MR. STERN: Good morning. Michael Stern
8 sitting in for Amy Schmidt with District of Columbia.

9 MR. FONSECA: Michael Fonseca on behalf of
10 the Licensee. With me is the president/principal,
11 Nevaldo Bailey.

12 CHAIRPERSON MILLER: Okay. Okay. In this
13 case there was a summary suspension hearing and the
14 Board accepted an OIC, which included certain terms.
15 And it's, I guess, my expectation that you will be
16 addressing the compliance with those terms.

17 MR. FONSECA: Yes. All those terms, which
18 included submitting a new security plan and having the
19 security training occurred in April. The security
20 trained -- by email to ABRA staff and to Amy Schmidt, I
21 submitted a letter from POST training, who's principal
22 was here testifying earlier this morning, that listed

1 the names of seven individuals, including Mr. Bailey,
2 who had -- who had participated and completed the
3 training, which occurred, I believe, on April 2nd and
4 3rd.

5 I do have now copies of certificates, if you
6 need those. But know a letter was submitted, if that
7 serves the purpose, because it is certification of the
8 training and the nature of the training. But the
9 security plan was submitted along with the PDF
10 attachment of the -- of the letter on the training by
11 email from the staff and to the Office of the Attorney
12 General April 24th.

13 We have not had further communication on any
14 concerns with the issue of the security plan. And
15 since that time, the business has been operating at
16 limited levels and really has not engaged in further
17 entertainment activities just because it's -- at this
18 point, the business is not doing well at all.

19 BOARD MEMBER: I'm sorry, speak a little
20 louder. I can't hear you.

21 MR. FONSECA: Yeah, just, you know, the
22 entertainment activities have ceased since the last

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1 time we were before the Board. And by and far, you
2 know, the business is not doing well. But we have
3 complied with the requirements of the -- within the
4 summary suspension. You know, that matter actually has
5 a show causes before the Board next Wednesday.

6 CHAIRPERSON MILLER: Okay. I just have a
7 quick question. You submitted a revised security plan,
8 correct?

9 MR. FONSECA: Yes.

10 CHAIRPERSON MILLER: Was that done in
11 consultation with OAG or did anybody else review that?

12 MR. FONSECA: Well, OAG was copied on it.
13 And as I said, it was April 24th.

14 CHAIRPERSON MILLER: Right.

15 MR. FONSECA: And I've had no -- other than
16 an acknowledgement by Jonathan Berman on the General
17 Counsel staff of receipt that the reviewed -- I've had
18 no comments coming back from the Office of the Attorney
19 General. I think after, you know --

20 CHAIRPERSON MILLER: Okay.

21 MR. FONSECA: -- two month now that that's
22 presumably then acceptable.

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1 CHAIRPERSON MILLER: Mr. Stern?

2 MR. STERN: Ms. Schmidt did not note any
3 issues that she had with the security plan. She has
4 gotten it and reviewed it appears legal -- requirements
5 that were put into place after the summary suspension
6 hearing.

7 CHAIRPERSON MILLER: Okay. Do you have any
8 concerns with any other aspects with the plan?

9 MR. STERN: No. In fact, all the
10 representations that Mr. Fonseca made were also made to
11 Ms. Schmidt. And she's prepared for the show cause
12 hearing but other than that, there's no comment on
13 summary suspension continuation.

14 CHAIRPERSON MILLER: Okay. Are there
15 questions from other Board members?

16 MR. NOPHLIN: I have one quick question --

17 CHAIRPERSON MILLER: Yeah.

18 MR. NOPHLIN: -- please, Madam Chair.

19 CHAIRPERSON MILLER: Uh-huh.

20 MR. NOPHLIN: And maybe one of you can
21 explain this to the Board -- at least me. Was the
22 security plan significant -- it was different from the

1 original plan?

2 MR. FONSECA: It is different and format-wise
3 there are similarities.

4 MR. NOPHLIN: Similarities?

5 MR. FONSECA: Yes, but it is different.

6 MR. NOPHLIN: And I just didn't have a chance
7 to review this plan. But there was a violation -- that
8 was one of the violations the Licensee had was didn't
9 follow security plan or they need to improve their
10 security plan? Which one?

11 MR. FONSECA: Yeah, well, shall we say both?
12 If I recall --

13 MR. NOPHLIN: And I hate to say this but the
14 reason I'm asking is I don't -- we don't have the
15 original plan in front of us. We have the new plan.

16 MR. FONSECA: Well, I don't know if I have
17 the older version of the file. I probably do. It's in
18 the show cause. The two issues of the security plan;
19 one was the functionality and recording by the -- by
20 the cameras, and the other one was an issue -- again, I
21 don't want to prejudice our case but the other one was
22 the issue of the requirement to call 911 in an

1 emergency.

2 So the plan has those issues in there. The
3 cameras are now -- without conceding that they weren't
4 functioning that evening, the number of cameras in the
5 plan, those are all working and are able to record for
6 30 days. Is that correct?

7 MR. BAILEY: Yes, sir. It's hard-wired.

8 MR. FONSECA: Yeah.

9 MR. NOPHLIN: Thank you and thank you, Madam.

10 CHAIRPERSON MILLER: That's --

11 MR. FONSECA: Hard-wire contacted. Oh, I'm
12 sorry. Okay. And the other thing is that the two
13 outdoor cameras have been on a wireless. Where the
14 interior ones were hard-wired, now the outdoor ones are
15 hard-wired.

16 MR. NOPHLIN: Hard-wired.

17 MR. FONSECA: Because the one in the front,
18 which was an issue --

19 MR. NOPHLIN: Okay.

20 MR. FONSECA: -- which we had to concede was
21 not recording --

22 MR. NOPHLIN: Was not -- the one --

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1 MR. FONSECA: That one's hard-wired and that
2 one does work and record.

3 MR. NOPHLIN: The one in front was not
4 recording?

5 MR. FONSECA: Correct.

6 MR. NOPHLIN: Okay. Now, and it's been
7 testified the plan will change that, right?

8 MR. BAILEY: Um-huh. It was frozen.

9 MR. FONSECA: Yeah, it was frozen. And that
10 was result was it didn't capture images.

11 MR. NOPHLIN: But it didn't --

12 MR. FONSECA: So, I mean, rather than, you
13 know, split hairs, it didn't capture images. So even
14 if you printed out, you know, and you saved what was
15 there for 30 minutes, it was a dead monitor.

16 MR. NOPHLIN: Okay. Thank you.

17 CHAIRPERSON MILLER: I'm sorry, I just want
18 to for the record say that in the Board's Order,
19 lifting the summary suspension -- because Paragraph 5
20 it says that, "The Licensee shall submit a revised and
21 updated security plan. This plan will include
22 provisions regarding the use of uniforms by security

1 employees, the process for maintaining and completing
2 an incident log, a process for contacting MPD, the
3 preservation of any crime scenes, and procedures for
4 the ejection of patrons from the establishment."

5 MR. FONSECA: Those are all in there.

6 CHAIRPERSON MILLER: Okay.

7 MR. FONSECA: And I think --

8 CHAIRPERSON MILLER: I just wanted -

9 MR. FONSECA: I believe the uniform is a
10 black t-shirt with the word, "Security," across the
11 front. And then the issues are in there as to log
12 book, as to capturing of evidence, as to ejection of
13 patrons. So those are all in there. It's a -- it's a
14 shorter version, but probably more to the point as to
15 hitting all those issues.

16 CHAIRPERSON MILLER: Right. Okay. Well,
17 there -- yes, Mr. Alberti.

18 MR. ALBERTI: Hi. Thank you. I mean, one of
19 the stipulations is that security footage will be made
20 available ABRA to view it in 72 hours. So Mr. Bailey,
21 who knows how to do that in your -- is that only you?
22 Okay. And --

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1 MR. BAILEY: Me and the managers are trained.

2 My -- I train -- I train other people how to do it.

3 MR. ALBERTI: So they know how to operate the
4 system and provide the video to whoever -- to MPD or
5 however one requests? Okay. So you don't need to call
6 in a technician or anything but --

7 MR. BAILEY: I also have somebody that I can
8 call in.

9 MR. ALBERTI: But you're capable of doing
10 that?

11 MR. BAILEY: Yes, sir. On the night of the
12 incident I was very ill. I was taken from my bed. I
13 was taking Percocet and I was off queue totally.

14 MR. ALBERTI: Right, right.

15 MR. BAILEY: So --

16 MR. ALBERTI: I don't want (inaudible) I want
17 to know where we're at.

18 MR. BAILEY: I just want to make sure you
19 know -

20 -

21 MR. ALBERTI: Right.

22 MR. BAILEY: -- that I'm a technician

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1 for 30 years.

2 MR. ALBERTI: Oh, okay.

3 MR. BAILEY: I'm qualified.

4 MR. ALBERTI: Okay. Great, great. What
5 would be the mechanism for providing that video
6 footage?

7 MR. BAILEY: CD.

8 MR. ALBERTI: CD?

9 MR. BAILEY: Right.

10 MR. ALBERTI: Okay. DVD or CD? Is CD big
11 enough?

12 MR. BAILEY: CD and DVD.

13 MR. ALBERTI: Okay.

14 MR. BAILEY: The machine will do both.

15 MR. ALBERTI: It'll just make a hard disk.
16 Okay, great.

17 MR. BAILEY: So you could also do flash --

18 MR. ALBERTI: Have all your --

19 MR. BAILEY: -- flash drive. We have a flash
20 drive.

21 MR. FONSECA: You could also, if you need
22 more data, use a flash drive --

1 MR. ALBERTI: Okay.

2 MR. FONSECA: -- to copy. Yeah.

3 MR. ALBERTI: All right. I just wanted to
4 make sure I understand that you have a mechanism for
5 doing that. You'd be surprised how many will tell me
6 they don't really know. Have all of your current
7 employees taken -- you know, taken formal security
8 training?

9 MR. BAILEY: Yes, everybody taken formal
10 security training.

11 MR. ALBERTI: And how -- who conducted that
12 training?

13 MR. FONSECA: It was HOST training. It was
14 Mr. Smith. It was Mr. Smith himself, correct?

15 MR. BAILEY: Yes.

16 MR. FONSECA: Yeah.

17 MR. ALBERTI: Okay. And --

18 MR. FONSECA: Who was just here testifying.
19 And there were seven, including --

20 MR. ALBERTI: He's still sitting in the back
21 there.

22 MR. FONSECA: -- Mr. Bailey. I mean, we can

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1 provide -- if I could staff, for the -- for the record,
2 provide the certificates.

3 MR. ALBERTI: That'd be great.

4 MR. FONSECA: There was a letter that was
5 previously --

6 MR. ALBERTI: Great.

7 MR. FONSECA: -- submitted. This way --

8 MR. ALBERTI: Are those extra copies for us?

9 MR. FONSECA: Pardon me?

10 MR. ALBERTI: Are those extra copies?

11 MR. FONSECA: Yes, yes, yes. This is a set
12 of seven.

13 MR. ALBERTI: Okay, great. Thank you. That
14 is -- that's all I have. Thank you very much.

15 CHAIRPERSON MILLER: Others? Okay. I'm
16 sorry if this has already been addressed, but I just
17 saw this - - an email and I just wanted to make sure.
18 The cameras - - is there a functioning camera to view
19 the summer garden?

20 MR. FONSECA: Yes. That's --

21 CHAIRPERSON MILLER: Yeah.

22 MR. FONSECA: -- the front --

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1 CHAIRPERSON MILLER: Okay.

2 MR. FONSECA: -- in essence. Right.

3 CHAIRPERSON MILLER: And did the Licensee
4 review the terms and conditions of the VA with all the
5 employees?

6 MR. BAILEY: Yes.

7 MR. FONSECA: We did that actually in advance
8 -- which I was there and assisted in that -- in advance
9 of the -- of the hearing to lift the summary
10 suspension. So that was -- that was accomplished
11 before the Board's order.

12 CHAIRPERSON MILLER: Okay. And how
13 frequently is that being done?

14 MR. FONSECA: And after again.

15 MR. BAILEY: After the Board order and we
16 went to visit the camera, I did it again.

17 MR. FONSECA: Okay. So it was done twice.
18 Mr. Bailey did again afterwards.

19 CHAIRPERSON MILLER: Okay. And, I mean, the
20 way that the order's written, it says that you'll do it
21 on a regular basis. So what does that mean to you
22 though?

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1 MR. BAILEY: New employees are monthly or
2 every two months and we usually have security meetings.
3 So I told the security people to -- when they meet to
4 do it.

5 CHAIRPERSON MILLER: Okay. Okay. All right.
6 Mr. Stern, anything else on your part?

7 MR. STERN: Nothing of relevance.

8 CHAIRPERSON MILLER: Okay. Anything else on
9 other Board members' part? All right. Then this is
10 just an update. And I think you've given us a good
11 update.

12 (WHEREUPON, at 11:36 a.m., the hearing was
13 concluded.)

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1 CERTIFICATE OF NOTARY PUBLIC

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3 I, NATALIA THOMAS, the officer before whom the
4 foregoing hearing was taken, do hereby certify that the
5 testimony appearing in the foregoing transcript was
6 recorded by me and thereafter reduced to typewriting
7 under my direction; that said transcription is a true
8 record of the testimony given by said parties; that I
9 am neither counsel for, related to, nor employed by any
10 of the parties to the action in which this 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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NATALIA THOMAS

20

Notary Public in and for

21

DISTRICT OF COLUMBIA

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1 CERTIFICATE OF TRANSCRIPTION

2

3 I, MIRANDA PENNACHI, hereby certify that I am not
4 the Court Reporter who reported the following
5 proceeding and that I have typed the transcript of this
6 proceeding using the Court Reporter's notes and
7 recordings. The foregoing/attached transcript is a
8 true, correct and complete transcription of said
9 proceeding.

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15 Date

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22

<p>1</p> <p>11 1:11</p> <p>11:23 2:2</p> <p>11:36 15:12</p> <p>12-251-00104 1:8 2:4</p> <p>14th 1:13</p> <hr/> <p>2</p> <p>2000 1:13</p> <p>2012 1:11</p> <p>24th 3:12 4:13</p> <p>2nd 3:3</p> <hr/> <p>3</p> <p>30 7:6 8:15 11:1</p> <p>3rd 3:4</p> <hr/> <p>4</p> <p>4C 1:8</p> <hr/> <p>5</p> <p>5 8:19</p> <hr/> <p>6</p> <p>60578 1:7</p> <hr/> <p>7</p> <p>72 9:20</p> <hr/> <p>8</p> <p>829 1:6</p> <hr/> <p>9</p> <p>911 6:22</p> <hr/> <p>A</p> <p>a.m 2:2 15:12</p> <p>able 7:5</p>	<p>ABRA 2:20 9:20</p> <p>acceptable 4:22</p> <p>accepted 2:14</p> <p>accomplished 14:10</p> <p>acknowledgement 4:16</p> <p>across 9:10</p> <p>action 16:10,14</p> <p>activities 3:17,22</p> <p>actually 4:4 14:7</p> <p>addressed 13:16</p> <p>addressing 2:16</p> <p>advance 14:7,8</p> <p>afterwards 14:18</p> <p>Alberti 1:16 9:17,18 10:3,9,14,16,21 11:2,4,8,10,13,1 5,18 12:1,3,11,17,20 13:3,6,8,10,13</p> <p>Alcoholic 1:2,12,13</p> <p>already 13:16</p> <p>am 16:9,11 17:3</p> <p>Amy 2:8,20</p> <p>ANC 1:8</p> <p>anybody 4:11</p> <p>anything 10:6 15:6,8</p> <p>appearing 16:5</p> <p>appears 5:4</p> <p>April 2:19 3:3,12 4:13</p> <p>aspects 5:8</p>	<p>assisted 14:8</p> <p>attachment 3:10</p> <p>attorney 3:11 4:18 16:12</p> <p>available 9:20</p> <hr/> <p>B</p> <p>Bailey 2:11 3:1 7:7 8:8 9:20 10:1,7,11,15,18, 22 11:3,7,9,12,14,1 7,19 12:9,15,22 14:6,15,18 15:1</p> <p>basis 14:21</p> <p>bed 10:12</p> <p>behalf 2:9</p> <p>believe 3:3 9:9</p> <p>Berman 4:16</p> <p>Beverage 1:2,12,13</p> <p>black 9:10</p> <p>Board 1:2,9,13 2:14 3:19 4:1,5 5:15,21 14:15 15:9</p> <p>Board's 8:18 14:11</p> <p>book 9:12</p> <p>BROOKS 1:16</p> <p>Building 1:13</p> <p>business 3:15,18 4:2</p> <hr/> <p>C</p> <p>Cafe 1:5,6 2:4</p> <p>CALVIN 1:17</p> <p>camera 13:18</p>	<p>14:16</p> <p>cameras 6:20 7:3,4,13 13:18</p> <p>capable 10:9</p> <p>capture 8:10,13</p> <p>capturing 9:12</p> <p>case 1:8 2:4,13 6:21</p> <p>cause 5:11 6:18</p> <p>causes 4:5</p> <p>CD 11:7,8,10,12</p> <p>ceased 3:22</p> <p>certain 2:14</p> <p>CERTIFICATE 16:1 17:1</p> <p>certificates 3:5 13:2</p> <p>certification 3:7</p> <p>certify 16:4 17:3</p> <p>Chair 5:18</p> <p>Chairperson 1:14,15 2:3,12 4:6,10,14,20 5:1,7,14,17,19 7:10 8:17 9:6,8,16 13:15,21 14:1,3,12,19 15:5,8</p> <p>chance 6:6</p> <p>change 8:7</p> <p>Columbia 1:1 2:8 16:21</p> <p>coming 4:18</p> <p>comment 5:12</p> <p>comments 4:18</p> <p>communication</p>
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