

Capital Reporting Company

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

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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<p style="text-align: right;">2</p> <p>1 PROCEEDINGS 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.</p>	<p style="text-align: right;">4</p> <p>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</p>
<p style="text-align: right;">3</p> <p>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.</p>	<p style="text-align: right;">5</p> <p>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</p>

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<p style="text-align: right;">6</p> <p>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.</p>	<p style="text-align: right;">8</p> <p>1 CERTIFICATE OF NOTARY PUBLIC 2 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. 15 16 17 _____ 18 ERICK McNAIR 19 Notary Public in and for the 20 District of Columbia 21 22 My commission expires: July 14, 2016</p>
<p style="text-align: right;">7</p> <p>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.) 19 20 21 22</p>	<p style="text-align: right;">9</p> <p>1 CERTIFICATE OF TRANSCRIPTION 2 3 I, MIRANDA PENNACHI, hereby certify that I am not 4 the Court Reporter who reported the proceeding and that 5 I have typed the transcript of the proceeding using the 6 Court Reporter's notes and recordings. The 7 foregoing/attached transcript is a true, correct and 8 complete transcription of the proceedings. 9 10 11 12 13 _____ 14 Date MIRANDA PENNACHI 15 Transcriptionist 16 17 18 19 20 21 22</p>

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<hr style="width: 100%;"/> <p style="text-align: center;">1</p> <hr style="width: 100%;"/> <p>10:34 2:2</p> <p>10:39 7:17</p> <p>12-251-00307 1:8 2:4</p> <p>14 8:22</p> <p>14th 1:13</p> <p>17 1:11</p> <hr style="width: 100%;"/> <p style="text-align: center;">2</p> <hr style="width: 100%;"/> <p>2000 1:13</p> <p>2012 1:9,11</p> <p>2016 8:22</p> <p>29 1:9</p> <hr style="width: 100%;"/> <p style="text-align: center;">4</p> <hr style="width: 100%;"/> <p>411 1:5,6 2:4</p> <hr style="width: 100%;"/> <p style="text-align: center;">5</p> <hr style="width: 100%;"/> <p>5B 1:8</p> <hr style="width: 100%;"/> <p style="text-align: center;">8</p> <hr style="width: 100%;"/> <p>82667 1:7</p> <hr style="width: 100%;"/> <p style="text-align: center;">A</p> <hr style="width: 100%;"/> <p>a.m 2:2 7:17</p> <p>action 8:10,14</p> <p>acts 5:10</p> <p>actually 3:12</p> <p>address 6:18</p> <p>advised 6:21</p> <p>ALBERTI 1:17 3:1,3,6,11,14,18, 21 6:5 7:1</p> <p>Alcoholic 1:2,12,13</p>	<p>am 8:8,11 9:3</p> <p>ANC 1:8</p> <p>appear 4:20</p> <p>appearing 8:5</p> <p>apply 6:10</p> <p>arrangement 5:14</p> <p>Assistant 2:8</p> <p>assisting 4:19</p> <p>Associates 1:5</p> <p>attorney 2:8 8:12</p> <p>Avenue 1:6 2:5</p> <hr style="width: 100%;"/> <p style="text-align: center;">B</p> <hr style="width: 100%;"/> <p>behalf 2:10,12 4:2</p> <p>believe 6:16</p> <p>Beverage 1:2,12,13</p> <p>Board 1:2,13 2:6,9 4:6,12,14,20,21 5:17,19,22 6:2,11,22</p> <p>Board's 4:10,19 5:16</p> <p>BROOKS 1:17</p> <p>brought 6:7</p> <p>Building 1:13</p> <p>business 5:14 6:10</p> <hr style="width: 100%;"/> <p style="text-align: center;">C</p> <hr style="width: 100%;"/> <p>calendar 2:4</p> <p>CALVIN 1:18</p> <p>camera 5:8</p> <p>cancelled 5:18</p> <p>case 1:8 2:3</p>	<p>cases 3:16</p> <p>cause 2:15</p> <p>CERTIFICATE 8:1 9:1</p> <p>certify 8:4 9:3</p> <p>Chairperson 1:14,16 2:3,11,13,17,22 3:2,5,10 4:5 6:4 7:8,11,14,16</p> <p>Chief 1:9</p> <p>circumstances 5:12 6:3</p> <p>class 6:7,12</p> <p>client 4:21</p> <p>closed 5:11</p> <p>closely 6:12</p> <p>Closure 1:9</p> <p>CN 6:17</p> <p>code 5:9</p> <p>Columbia 1:1 2:7 8:20</p> <p>coming 4:11</p> <p>commission 8:22</p> <p>complete 9:8</p> <p>compliance 5:7</p> <p>compromise 4:13</p> <p>concern 6:7</p> <p>concerns 3:14</p> <p>concluded 7:18</p> <p>constructive 4:22 5:5</p> <p>consultation 4:17</p> <p>continuing 5:4,13</p>	<p>Control 1:2,12,13</p> <p>correct 9:7</p> <p>correction 5:8</p> <p>counsel 4:19 8:9,12</p> <p>couple 4:16</p> <p>Court 9:4,6</p> <p>CX 1:7 6:14</p> <hr style="width: 100%;"/> <p style="text-align: center;">D</p> <hr style="width: 100%;"/> <p>D.C 1:14</p> <p>damages 5:12</p> <p>Dance 1:5</p> <p>Date 9:14</p> <p>days 4:16</p> <p>dealing 3:15</p> <p>declined 4:14</p> <p>desired 5:20</p> <p>direction 8:7</p> <p>discussion 6:20</p> <p>District 1:1 2:7 8:20</p> <p>DONALD 1:17</p> <p>done 5:19</p> <p>door 5:8</p> <hr style="width: 100%;"/> <p style="text-align: center;">E</p> <hr style="width: 100%;"/> <p>effectively 5:4,14 7:9</p> <p>electricity 5:5</p> <p>employed 8:9,12</p> <p>employee 8:11</p> <p>entreaties 5:4</p> <p>ERICK 8:3,18</p>

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