

Capital Reporting Company
In the Matter of: Atomic Billiards Corporation 07-11-2012

1

DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :
 :
Atomic Billiards Corporation :
t/a Atomic Billiards :
3427 Connecticut Avenue, NW :
Retailer CT : Show Cause
License No. 19007 : Hearing
ANC 3C :
Case No. 11-CMP-00489 :
Operating After Hours :
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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

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2	<p>1 PROCEEDINGS</p> <p>2 3:39 p.m.</p> <p>3 CHAIRPERSON MILLER: Okay. Everybody's here?</p> <p>4 This is Case No. 11-CMP-00489, a show cause hearing for</p> <p>5 Atomic Billiards, located at 3427 Connecticut Avenue,</p> <p>6 N.W., License No. 19007, in ANC 3C.</p> <p>7 Good afternoon. Would you introduce</p> <p>8 yourselves for the record, please?</p> <p>9 MS. PHILLIPS: Louise Phillips, Assistant</p> <p>10 Attorney General for the District of Columbia. Good</p> <p>11 afternoon again, Board members.</p> <p>12 CHAIRPERSON MILLER: Good afternoon.</p> <p>13 MR. O'BRIEN: Stephen O'Brien for the</p> <p>14 applicant. I'm accompanied by the applicant's</p> <p>15 president, Mark Handwerger, spelled H-A-N-D-W-E-R-G-E-</p> <p>16 R.</p> <p>17 CHAIRPERSON MILLER: Okay. So this is a show</p> <p>18 cause hearing. Are there any preliminary matters?</p> <p>19 MS. PHILLIPS: Yes, there are, Madam Chair.</p> <p>20 The government was introducing an offer in compromise</p> <p>21 with the parties I've discussed and agreed upon, which</p> <p>22 we will present to the Board at this time. That would</p>	4
3	<p>1 be -- it's in two parts; a \$2000 fine and two days</p> <p>2 served from a prior violation on September 3rd and</p> <p>3 September 4th.</p> <p>4 I have been informed that the establishment</p> <p>5 is open those two days. And then three suspension days</p> <p>6 stayed for one year.</p> <p>7 CHAIRPERSON MILLER: And where would -- when</p> <p>8 would the fine be paid?</p> <p>9 MS. PHILLIPS: Today.</p> <p>10 CHAIRPERSON MILLER: Today. Okay. Okay. So</p> <p>11 I just want to ask the Licensee if you're agreeable to</p> <p>12 that offer in compromise, which I have heard to be a</p> <p>13 \$2000 fine payable today, two days would be served from</p> <p>14 a prior -- that's a prior violation -- and three</p> <p>15 suspension days, which will be stayed for a year?</p> <p>16 MR. HANDWERGER: Yes, ma'am.</p> <p>17 CHAIRPERSON MILLER: Okay. And you</p> <p>18 understand that you waive your right to a hearing by</p> <p>19 accepting this offer in compromise?</p> <p>20 MR. HANDWERGER: Yes, I do.</p> <p>21 CHAIRPERSON MILLER: Okay. Anything else for</p> <p>22 the parties --</p>	5
4	<p>1 MR. O'BRIEN: Before the Board retires --</p> <p>2 CHAIRPERSON MILLER: Uh-huh.</p> <p>3 MR. O'BRIEN: -- to consider that, I'd like</p> <p>4 to just point out a couple things. There may have been</p> <p>5 -- there may exist some factual dispute as to exactly</p> <p>6 what happened. But there is no question that customers</p> <p>7 were in possession of drinks -- alcoholic beverages --</p> <p>8 beyond the 1:30 hour of sale specified on the license.</p> <p>9 So no matter which version one accepts, we're willing</p> <p>10 to concede that the statute was violated.</p> <p>11 But this is a good opportunity for me to</p> <p>12 bring to the attention of the Board -- or invite the</p> <p>13 attention of the Board to what I consider an ongoing</p> <p>14 problem. The license in this case had hours of</p> <p>15 operation until 2:00 and 3:00 in the morning, both</p> <p>16 hours, but then had hours of sales -- and the word on</p> <p>17 the license is sales -- terminating one half-hour</p> <p>18 earlier than each of those two.</p> <p>19 And I have found that there's a persistent</p> <p>20 misunderstanding in the community as to what sales</p> <p>21 means in this context. We would do this every day.</p> <p>22 Understand that sales means sales and consumption. The</p>	6
5	<p>1 term sales and consumption are synonymous. But one who</p> <p>2 is not doing this on a daily basis easily can conclude</p> <p>3 from the face of the license that you could sell up to,</p> <p>4 say, 1:30 but continue to operate until 2:00 --</p> <p>5 CHAIRPERSON MILLER: Uh-huh.</p> <p>6 MR. O'BRIEN: -- meaning that customers could</p> <p>7 continue to finish their drinks. Sales and consumption</p> <p>8 are synonymous. You can't -- I think sales are</p> <p>9 subsumed into consumption. So I think the license form</p> <p>10 would be a lot clearer and a lot of confusion --</p> <p>11 CHAIRPERSON MILLER: Uh-huh.</p> <p>12 MR. O'BRIEN: -- confusion could be avoided</p> <p>13 if, instead of just the word sales on the face of the</p> <p>14 license, it read, "Sales and consumption," or merely,</p> <p>15 "Consumption." Because you can't consume unless there's</p> <p>16 been a sale. That's for what it's worth.</p> <p>17 The other point I would make is that when</p> <p>18 this -- when we obtained a copy of the investigative</p> <p>19 report and realized the discrepancy that I just</p> <p>20 identified to the Board, we applied to the Board and</p> <p>21 the Board did approve extension of hours of operation -</p> <p>22 - extension of hours of sales to coincide with hours of</p>	7

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6	<p>1 operation. So there has been a remedial effort here. 2 I would ask the Board, take those factors 3 into consideration when it deliberates, please. 4 CHAIRPERSON MILLER: Okay. Anything else? 5 MR. NOPHLIN: Madam Chair? 6 CHAIRPERSON MILLER: Yes. 7 MR. NOPHLIN: I would like for you to give us 8 an example of what you're referring to. Just give us 9 an example of what is consumption and what is sales. 10 MR. O'BRIEN: Well, consumption, in my mind, 11 means possession of beverages. It doesn't necessarily 12 mean sipping it, but having it within the dominion of a 13 customer. That's consumption. The sales, I think to 14 the layman, means the transaction of delivering the 15 beverage to the customer. I don't think you can have 16 consumption unless there's already been a sale. That's 17 why I think the word sales is probably subsumed into 18 the word consumption. 19 But again, the -- one looking at the face of 20 a license could easily conclude that you can sell up to 21 1:30, in this case, but that you can operate until 22 2:00. And operation means the customers are finishing</p>	8
7	<p>1 their drink. We, who do this every day, know better. 2 But I think the license form itself is confusing. And 3 it's -- and I've seen this confusion in a number of 4 other instances, not involving this particular 5 Licensee. 6 So that's why I suggest the form of the 7 license should be changed to either read, "Sales and 8 consumption," or merely, "Consumption." 9 MR. NOPHLIN: Thank you. Thank you. 10 CHAIRPERSON MILLER: Okay. I think we're 11 going to deliberate this out here actually because this 12 is a pretty straightforward situation, as I understand 13 it. And I understand that the sales ended at -- it was 14 at 1:30. And there was consumption, as you identified, 15 at 16 1:50. 17 MR. O'BRIEN: I want to be fair to both sides 18 here. If the prosecution put on its evidence, there 19 would be evidence that sales were made beyond 1:30. 20 CHAIRPERSON MILLER: Right. 21 MR. O'BRIEN: There is a different version 22 from the defense side. But there is no dispute that</p>	9

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<p style="text-align: right;">10</p> <p>1 MR. BROOKS: Aye. 2 CHAIRPERSON MILLER: Aye? Okay. Then the 3 vote is 4-1-0 to approve the offer in compromise. 4 Thank you. 5 MR. O'BRIEN: Thank you very much. 6 CHAIRPERSON MILLER: Okay. That concludes 7 our - - the cases on our calendar for today. But we 8 will be returning shortly to do our agenda and 9 cancellations. 10 (WHEREUPON, at 3:49 p.m., the hearing was 11 concluded.) 12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">12</p> <p>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. 10 11 12 13 14 _____ 15 Date MIRANDA PENNACHI 16 Transcriptionist 17 18 19 20 21 22</p>
<p style="text-align: right;">11</p> <p>1 CERTIFICATE OF NOTARY PUBLIC 2 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. 15 16 17 18 19 _____ 20 NATALIA THOMAS 21 Notary Public in and for 22 DISTRICT OF COLUMBIA</p>	

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<hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$2000 3:1,13 8:20</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1:30 4:8 5:4 6:21 7:14,19 8:1,10</p> <p>1:50 7:16</p> <p>11 1:10</p> <p>11-CMP-00489 1:8 2:4</p> <p>14th 1:13</p> <p>19007 1:7 2:6</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2:00 4:15 5:4 6:22</p> <p>2000 1:13</p> <p>2012 1:10</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3:00 4:15</p> <p>3:39 2:2</p> <p>3:49 10:10</p> <p>3427 1:6 2:5</p> <p>3C 1:8 2:6</p> <p>3rd 3:2 8:21</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4-1-0 10:3</p> <p>4th 3:3 8:22</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>Absolutely 8:12</p> <p>abstaining 9:19</p> <p>accept 8:19 9:4</p> <p>accepting 3:19</p> <p>accepts 4:9</p>	<p>accompanied 2:14</p> <p>action 11:10,14</p> <p>actually 7:11</p> <p>admitted 8:10</p> <p>afternoon 2:7,11,12</p> <p>agenda 10:8</p> <p>agreeable 3:11</p> <p>agreed 2:21</p> <p>Alberti 1:15 9:11</p> <p>alcoholic 1:2,11,12 4:7</p> <p>already 6:16</p> <p>am 11:9,11 12:3</p> <p>ANC 1:8 2:6</p> <p>anybody 9:7</p> <p>Anything 3:21 6:4</p> <p>appearing 11:5</p> <p>applicant 2:14</p> <p>applicant's 2:14</p> <p>applied 5:20</p> <p>appropriate 9:2</p> <p>approve 5:21 9:4 10:3</p> <p>Assistant 2:9</p> <p>Atomic 1:5,6 2:5</p> <p>attention 4:12,13</p> <p>attorney 2:10 11:12</p> <p>audible 9:20</p> <p>Avenue 1:6 2:5</p> <p>avoided 5:12</p> <p>aye 9:15 10:1,2</p> <p>eyes 9:16</p>	<hr/> <p style="text-align: center;">B</p> <hr/> <p>based 8:16</p> <p>basis 5:2</p> <p>better 7:1</p> <p>beverage 1:2,11,12 6:15</p> <p>beverages 4:7 6:11</p> <p>beyond 4:8 7:19 8:10</p> <p>Billiards 1:5,6 2:5</p> <p>Board 1:2,12 2:11,22 4:1,12,13 5:20,21 6:2 8:4 9:18</p> <p>bring 4:12</p> <p>Brooks 1:16 9:21 10:1</p> <p>Building 1:13</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calendar 10:7</p> <p>CALVIN 1:17</p> <p>cancellations 10:9</p> <p>case 1:8 2:4 4:14 6:21</p> <p>cases 10:7</p> <p>cause 1:7 2:4,18</p> <p>CERTIFICATE 11:1 12:1</p> <p>certify 11:4 12:3</p> <p>Chair 2:19 6:5</p> <p>Chairperson 1:13,15 2:3,12,17 3:7,10,17,21 4:2 5:5,11 6:4,6</p>	<p>7:10,20 8:3,6,13,15 9:7,13,17,19,21 10:2,6</p> <p>changed 7:7</p> <p>Chorus 9:16</p> <p>clearer 5:10</p> <p>coincide 5:22</p> <p>Columbia 1:1 2:10 11:21</p> <p>comments 9:8,9</p> <p>community 4:20</p> <p>complete 12:8</p> <p>complex 8:9</p> <p>compromise 2:20 3:12,19 8:16 9:3 10:3</p> <p>concede 4:10</p> <p>conceded 8:14</p> <p>conclude 5:2 6:20</p> <p>concluded 10:11</p> <p>concludes 10:6</p> <p>confusing 7:2</p> <p>confusion 5:10,12 7:3</p> <p>Connecticut 1:6 2:5</p> <p>consider 4:3,13</p> <p>consideration 6:3</p> <p>consume 5:15</p> <p>consumption 4:22 5:1,7,9,14,15 6:9,10,13,16,18 7:8,14 8:1,10</p> <p>context 4:21</p> <p>continue 5:4,7</p>
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