

Capital Reporting Company
In the Matter of: The Popal Group, LLC t/a Napoleon 10-10-2012

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DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :
 :
The Popal Group, LLC :
t/a Napoleon :
1847 Columbia Road, NW :
Retailer CR : Show Cause
License No. 75836 : Hearing
ANC 1C :
Violation of Voluntary Agreement:
(Noise) :
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October 10, 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 11:27 a.m.

3 CHAIRPERSON MILLER: All right. So I'm going
4 to call the next case, which is Case No. 12-CMP-00063,
5 Napoleon, located at 1847 Columbia Road, N.W., License
6 No. 75836, in ANC 1C. This is a show cause hearing.

7 MR. BROOKS: Madam Chair, I'm going to recuse
8 myself from this hearing.

9 CHAIRPERSON MILLER: Okay. When you're
10 ready?

11 MR. RIVERO: Good morning. Yes.

12 CHAIRPERSON MILLER: Good morning.

13 MR. RIVERO: Good morning, Board members.
14 Fernando Rivero and Marquis Starks for the District of
15 Columbia.

16 MR. O'BRIEN: Stephen O'Brien for the
17 Licensee. I'm accompanied by Omar Popal, P-O-P-A-L, who
18 is the Licensee's managing member.

19 CHAIRPERSON MILLER: Okay. A show cause
20 hearing -- do we have any preliminary matters?

21 MR. RIVERO: Yes, Board members. We actually
22 have an offer in compromise to present to the Board at

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1 this time. And that offer consists of a fine of \$1500
2 payable in 30 days. The parties had been negotiating
3 an offer and one had not been provided at the status
4 hearing. We had learned that the Licensee did not have
5 an opportunity for an in-house settlement and that was --

6 CHAIRPERSON MILLER: Did not?

7 MR. RIVERO: Have an opportunity for an in-
8 house settlement offer. And that was factored into the
9 OIC that you have received today. It is within the
10 statutory range.

11 CHAIRPERSON MILLER: What's the statutory
12 range, do you know?

13 MR. RIVERO: It's \$1000-\$2000 --

14 CHAIRPERSON MILLER: Okay.

15 MR. RIVERO: -- for a fourth secondary-tier
16 offense.

17 CHAIRPERSON MILLER: And is this -- is this
18 for one violation or two? I think this is about some
19 noise violations, correct?

20 MR. RIVERO: Yeah, it was one charge.

21 CHAIRPERSON MILLER: One charge. Okay.

22 Never mind.

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1 MR. STARKS: Correct, one charge.

2 CHAIRPERSON MILLER: Okay. Board members
3 have any questions? Oh, I'm sorry. Mr. O'Brien, do
4 you have a comment on this?

5 MR. O'BRIEN: I'll defer to Mr. Jones, who I
6 see trying --

7 CHAIRPERSON MILLER: Oh, Mr. Jones, do you
8 have a question? Yeah?

9 MR. JONES: Yes. Just for -- just for
10 clarification purposes, you're saying it's the fourth
11 secondary-tier?

12 MR. RIVERO: That is correct.

13 MR. JONES: Okay.

14 MR. RIVERO: And the range for that under the
15 statute is between \$1000-\$2000.

16 MR. JONES: Right. Okay.

17 MR. RIVERO: And I indicated what my thought
18 process was given the --

19 MR. JONES: Right.

20 MR. RIVERO: -- new staff settlement.

21 MR. JONES: Thank you very much.

22 MR. RIVERO: You're welcome.

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1 MR. O'BRIEN: Madam Chair, Mr. Rivero has
2 correctly stated the agreement of the parties but
3 before the Board retires to consider the offer, I would
4 like to be heard -- I suppose I could say in
5 mitigation. So when the --

6 CHAIRPERSON MILLER: Okay.

7 MR. O'BRIEN: -- Board's ready to receive
8 that presentation, I'd appreciate it.

9 CHAIRPERSON MILLER: Okay. Questions? Okay.
10 Mr. Rivero, I just thought of a question for you. What
11 did you say, there was no opportunity for staff
12 settlement?

13 MR. RIVERO: Right, there wasn't. And so I
14 learned that and that was factored into the offer you
15 see today.

16 CHAIRPERSON MILLER: Okay. All right. Mr.
17 O'Brien, you -- do you want to make a brief statement?

18 MR. O'BRIEN: Yes. This was a difficult case
19 to decide to settle by means of offer in compromise.
20 If we went to a hearing, the investigators would
21 testify that on two occasions in January, approximately
22 two weeks apart, they went to two different apartments

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1 within the building that houses the licensed
2 establishment. And they were able to hear music from
3 the licensed establishment. We would not challenge at
4 a hearing that testimony.

5 However, Mr. Popal would testify generally --
6 I don't mean to be putting precise words here -- that a
7 new landlord was doing construction activity in the
8 building and that, whereas, no noise had been heard
9 upstairs -- or no one complained about it anyway -- in
10 the years preceding January of this year, all of a
11 sudden a problem arose -- apparently, not on the second
12 and third and fourth floors, but on the fifth and sixth
13 floors.

14 The problem was identified as perhaps a piece
15 of duct that was hollow or piping that had -- for which
16 the insulation had been removed. Mr. Popal would not
17 be able to say for sure because he didn't crawl up into
18 the ceilings to see what was going on. But he spoke to
19 the landlord after this -- these January incidents.
20 And he's of the understanding that the landlord took
21 remedial measures.

22 The landlord confirmed to Mr. Popal, when he

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1 inquired in June, that there'd been no further noise
2 complaints. And yesterday, October 9th, Mr. Popal
3 inquired of the landlord again to see whether there'd
4 been any noise complaints and again was told there have
5 not been. Mr. Popal, if this went to hearing, would be
6 of the opinion that this was not the fault of the
7 licensed establishment, that the reason was a third
8 party had done something physically, and that the
9 matter had since been resolved.

10 I would anticipate the response to that --
11 Mr. Rivero would argue that the -- that it says -- the
12 voluntary agreement says, "User will not be heard."
13 User was heard, ipso facto, a violation where they'll
14 restrict liability. It was difficult. Mr. Popal
15 wanted to tell the Board what had happened but we've
16 decided to enter into the offer in compromise in order
17 to remove the uncertainty, the danger of perhaps a
18 greater penalty if we went to hearing.

19 CHAIRPERSON MILLER: Okay. Thank you. Okay.
20 You don't need to add anymore, do you, Mr. Rivero?

21 MR. RIVERO: Less is more sometimes.

22 CHAIRPERSON MILLER: Yes, that's true. That

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1 is very true. Okay.

2 MR. RIVERO: But the government can answer
3 any questions.

4 CHAIRPERSON MILLER: Okay. Any questions,
5 Board members? All right. I think we're ready to
6 proceed then. Mr. O'Brien, I can't remember whether we
7 did this but there's an offer in compromise for a \$1500
8 penalty to be paid within 30 days. Is your client --
9 does your client understand that to be the OIC and is
10 he agreeable to that?

11 MR. O'BRIEN: Yes, and waive our right to a
12 hearing.

13 CHAIRPERSON MILLER: Okay. Good. All right.
14 Therefore, then I would move that we accept this offer
15 in compromise of \$1500 to be paid within 30 days.

16 Do I have a second?

17 MR. NOPHLIN: Second.

18 CHAIRPERSON MILLER: Okay. The motion's been
19 seconded by Mr. Nophlin. Any other questions or
20 concerns?

21 (No audible response.)

22 CHAIRPERSON MILLER: All right. All those in

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1 favor of this offer in compromise, say aye?

2 (Chorus of ayes.)

3 CHAIRPERSON MILLER: All those opposed?

4 (No audible response.)

5 CHAIRPERSON MILLER: All those abstaining?

6 (No audible response.)

7 CHAIRPERSON MILLER: And the motion to
8 approve any offer in compromise passes by a vote of 6-0-0.

9 MR. O'BRIEN: I believe that's 5-0, Madam
10 Chair, because Mr. Brooks recused himself.

11 CHAIRPERSON MILLER: That's correct.

12 MR. BROOKS: Yes.

13 CHAIRPERSON MILLER: Thank you though. Let
14 me correct the record. The vote is 5-0-0. Mr. Brooks
15 recused. Thank you very much.

16 MR. O'BRIEN: Thank you.

17 MR. RIVERO: Thank you.

18 CHAIRPERSON MILLER: Okay. The Board is just
19 going to take a five-minute break and then come back
20 for the last case on the calendar this morning.

21 (WHEREUPON, at 11:36 a.m., the hearing was
22 concluded.)

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CERTIFICATE OF NOTARY PUBLIC

I, NATALIA THOMAS, the officer before whom the foregoing hearing was taken, do hereby certify that the testimony appearing in the foregoing pages was recorded by me and thereafter reduced to typewriting under my direction; that said transcription is a true record of the testimony given by said parties; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

BRADLEY ANGLIN

Notary Public in and for the

District of Columbia

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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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<hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$1000-\$2000 3:13 4:15</p> <p>\$1500 3:1 8:7,15</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>10 1:10</p> <p>11:27 2:2</p> <p>11:36 9:21</p> <p>12-CMP-00063 2:4</p> <p>14th 1:12</p> <p>1847 1:6 2:5</p> <p>1C 1:8 2:6</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2000 1:12</p> <p>2012 1:10</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>30 3:2 8:8,15</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5-0 9:9</p> <p>5-0-0 9:14</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6-0-0 9:8</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>75836 1:7 2:6</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9th 7:2</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>a.m 2:2 9:21</p> <p>able 6:2,17</p>	<p>abstaining 9:5</p> <p>accept 8:14</p> <p>accompanied 2:17</p> <p>action 10:10,14</p> <p>activity 6:7</p> <p>actually 2:21</p> <p>add 7:20</p> <p>agreeable 8:10</p> <p>agreement 1:8 5:2 7:12</p> <p>ALBERTI 1:16</p> <p>Alcoholic 1:2,11,12</p> <p>am 10:8,11 11:3</p> <p>ANC 1:8 2:6</p> <p>ANGLIN 10:18</p> <p>answer 8:2</p> <p>anticipate 7:10</p> <p>anymore 7:20</p> <p>anyway 6:9</p> <p>apart 5:22</p> <p>apartments 5:22</p> <p>apparently 6:11</p> <p>appearing 10:5</p> <p>appreciate 5:8</p> <p>approve 9:8</p> <p>approximately 5:21</p> <p>argue 7:11</p> <p>arose 6:11</p> <p>attorney 10:12</p> <p>audible 8:21 9:4,6</p> <p>aye 9:1</p> <p>ayes 9:2</p>	<hr/> <p style="text-align: center;">B</p> <hr/> <p>believe 9:9</p> <p>Beverage 1:2,11,12</p> <p>Board 1:2,12 2:13,21,22 4:2 5:3 7:15 8:5 9:18</p> <p>Board's 5:7</p> <p>BRADLEY 10:18</p> <p>break 9:19</p> <p>brief 5:17</p> <p>Brooks 1:16 2:7 9:10,12,14</p> <p>building 1:12 6:1,8</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calendar 9:20</p> <p>CALVIN 1:17</p> <p>case 2:4 5:18 9:20</p> <p>cause 1:7 2:6,19</p> <p>ceilings 6:18</p> <p>CERTIFICATE 10:1 11:1</p> <p>certify 10:4 11:3</p> <p>Chair 2:7 5:1 9:10</p> <p>Chairperson 1:13,15 2:3,9,12,19 3:6,11,14,17,21 4:2,7 5:6,9,16 7:19,22 8:4,13,18,22 9:3,5,7,11,13,18</p> <p>challenge 6:3</p> <p>charge 3:20,21 4:1</p>	<p>Chorus 9:2</p> <p>clarification 4:10</p> <p>client 8:8,9</p> <p>Columbia 1:1,6 2:5,15 10:20</p> <p>comment 4:4</p> <p>complained 6:9</p> <p>complaints 7:2,4</p> <p>complete 11:8</p> <p>compromise 2:22 5:19 7:16 8:7,15 9:1,8</p> <p>concerns 8:20</p> <p>concluded 9:22</p> <p>confirmed 6:22</p> <p>consider 5:3</p> <p>consists 3:1</p> <p>construction 6:7</p> <p>Control 1:2,11,12</p> <p>correct 3:19 4:1,12 9:11,14 11:7</p> <p>correctly 5:2</p> <p>counsel 10:9,12</p> <p>Court 11:4,6</p> <p>CR 1:7</p> <p>crawl 6:17</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C 1:13</p> <p>danger 7:17</p> <p>Date 11:14</p> <p>days 3:2 8:8,15</p> <p>decide 5:19</p> <p>decided 7:16</p>
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<p>defer 4:5 different 5:22 difficult 5:18 7:14 direction 10:7 District 1:1 2:14 10:20 DONALD 1:16 done 7:8 duct 6:15</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>employed 10:9,12 employee 10:11 enter 7:16 establishment 6:2,3 7:7</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>facto 7:13 factored 3:8 5:14 fault 7:6 favor 9:1 Fernando 1:19 2:14 fifth 6:12 financially 10:13 fine 3:1 five-minute 9:19 floors 6:12,13 foregoing 10:4,5 foregoing/ attached 11:7 fourth 3:15 4:10 6:12</p> <hr/> <p style="text-align: center;">G</p> <hr/>	<p>generally 6:5 given 4:18 10:8 government 8:2 greater 7:18 Group 1:5</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>happened 7:15 hear 6:2 heard 5:4 6:8 7:12,13 hearing 1:7,12 2:6,8,20 3:4 5:20 6:4 7:5,18 8:12 9:21 10:4,10 hereby 10:4 11:3 hereto 10:12 HERMAN 1:17 he's 6:20 hollow 6:15 house 3:8 houses 6:1</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>I'd 5:8 identified 6:14 I'll 4:5 I'm 2:3,7,17 4:3 incidents 6:19 indicated 4:17 in-house 3:5 inquired 7:1,3 insulation 6:16 interested 10:13 investigators 5:20</p>	<p>ipso 7:13 it's 3:13 4:10</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>January 5:21 6:10,19 Jones 1:17 4:5,7,9,13,16,19, 21 June 7:1</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>landlord 6:7,19,20,22 7:3 last 9:20 learned 3:4 5:14 Less 7:21 liability 7:14 License 1:7 2:5 licensed 6:1,3 7:7 Licensee 2:17 3:4 Licensee's 2:18 LLC 1:5 located 2:5</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>Madam 2:7 5:1 9:9 managing 2:18 Marquis 2:14 matter 1:4 7:9 matters 2:20 mean 6:6 means 5:19 measures 6:21 MEETING 1:3</p>	<p>member 1:16,17,18 2:18 members 2:13,21 4:2 8:5 met 1:12 MIKE 1:18 Miller 1:13,15 2:3,9,12,19 3:6,11,14,17,21 4:2,7 5:6,9,16 7:19,22 8:4,13,18,22 9:3,5,7,11,13,18</p> <p>mind 3:22 MIRANDA 11:3,14 mitigation 5:5 morning 2:11,12,13 9:20 motion 9:7 motion's 8:18 move 8:14 music 6:2 myself 2:8</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N.W 1:12 2:5 Napoleon 1:6 2:5 NATALIA 10:3 negotiating 3:2 neither 10:8 NICK 1:16 noise 1:9 3:19 6:8 7:1,4 Nophlin 1:17 8:17,19 nor 10:9,13</p>
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