

ACTION SHEET
ITEM FROM FINANCE COMMITTEE MEETING OF 02/01/16
FOR CITY COUNCIL MEETING OF 02/10/16

ISSUE:

19. Request for Approval of Settlement Agreement With Anasazi Gallery Trading on Business License. (Zach Shandler)

FINANCE COMMITTEE ACTION:

Approved as Discussion item.

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

4-13-15

City of Santa Fe, New Mexico

memo

TO: COUNCILOR DOMINGUEZ, FINANCE COMMITTEE CHAIRPERSON
FROM: ZACK SHANDLER, ASSISTANT CITY ATTORNEY 38
SUBJECT: BUSINESS LICENSE—SETTLEMENT AGREEMENT
DATE: 1/22/16

BACKGROUND

On May 4, 2015, the Finance Committee heard an item: “Action Item: Administrative Hearing on Anasazi Gallery Trading Inc., License No. 15 00129176.” City staff alleged that Mr. Amjad Nassar was the owner of **Anasazi Gallery** and received a distress merchandise sale permit in the fall of 2014 and then immediately thereafter, Mr. Nassar “re-opened” **Anasazi Gallery Trading** at the same location. After a public hearing, the Finance Committee voted to recommend to the City Council that it consider the revocation of **Anasazi Gallery Trading’s** business license. The matter has not been scheduled for a City Council meeting due to new information.

NEW INFORMATION

*In the fall of 2015, the City Council passed several key amendments to its Distress Merchandise Sale Ordinance. These include the new requirement at Section 18-5.1(C)(1) that if “old Company A” has received a permit within the last three years, then the City can deny a permit to “new Company B” if it is really not a “new company” based on a “preponderance of characteristics such as unique advertising, branding, logo(s), operations, ownership structure, inventory, products, services, location, physical separation or other characteristics that would make the commercial operation distinctly different.”

***Anasazi Gallery Trading** has provided an affidavit from an independent party, Mr. Jerry Martinez, professional bookkeeper, corroborating the claim that Amjad Nassar was just an employee of **Anasazi Gallery** (his brother Majdi Nassar was the owner—Majdi Nasser has since moved to Colorado). Mr. Martinez also provided multi-year tax returns corroborating the claim.

SETTLEMENT AGREEMENT—KEY POINTS

- * City will withdraw its request to revoke **Anasazi Gallery Trading’s** business license.
- *Mr. Amjad Nassar and the **Anasazi Gallery Trading** will go beyond the requirements of the Distress Merchandise Sale Ordinance and have voluntarily agreed not to apply for a distress merchandise sale permit for 2 years (starting from the date of the approval of the Agreement).

ACTION REQUESTED

The City Attorney’s Office is requesting a motion “recommending to the City Council the acceptance of the Settlement Agreement.” If there is a positive vote, the City Attorney’s Office will request a Council agenda item for a vote to formally accept the Agreement.

DOCUMENTS INCLUDED

- Exhibit A—Proposed Settlement Agreement
- Exhibit B—2015 Proposed Finance Committee Order
- Exhibit C--Affidavit of Jerry Martinez
- Exhibit D--Affidavit of Amjad Nasser

SETTLEMENT AGREEMENT

ANASAZI GALLERY TRADING, INC., a New Mexico corporation ("Anasazi"), and AMJAD N. NASSAR, individually, ("Nassar") and the City of Santa Fe, a New Mexico municipal corporation, (the "City") enter into this Agreement on this ____ day of _____, 201_.

1. Distress Merchandise Sales; Waiver. Nassar and Anasazi agree that, in the event that Anasazi ceases doing business in its present location of 150 Washington Ave. Suite 103, neither Nassar, in any capacity, nor Anasazi will apply for or obtain permit for a Distressed Merchandise Sale within the City of Santa Fe for a period of not less than two (2) years from the date of this Settlement Agreement. It is expressly understood and agreed that Nassar and Anasazi are waiving the rights under SFCC 1987 Section 18.5D which provides for the issuance of permit for a Distressed Merchandise Sale.

2. Withdraw^N of Enforcement Action. The City agrees that in consideration of the foregoing agreement, it hereby withdraws and dismisses with prejudice the pending enforcement action against Nassar and Anasazi with respect to the business license issued to Anasazi Gallery Trading, Inc. (the "Enforcement Action").

3. Issuance of License Renewal. The City agrees that it will issue a renewal of the business license for Anasazi for the year 2016, provided that all fees are paid and the application otherwise complies with the applicable City regulations. It is expressly agreed that the renewal will not be withheld by reason of any of the allegations or claims made in the Enforcement Action.



4. Compromise of Disputed Claims. This Settlement Agreement represents the resolution and compromise of disputed claims. Neither party admits fault or acquiesces in the legal or factual assertions of the other related to the Enforcement Action.

5. Reliance on Representations. The parties acknowledge that the City in entering into this Settlement Agreement, the City has relied upon the Affidavits of Nassar, Majdi F. Nassar and Jerry Martinez, which Affidavit are attached hereto as Exhibits A, B and C.

City of Santa Fe

By: _____
Mayor Javier Gonzales

Attested to by:

Yolanda Vigil, City Clerk

Approved as to form by:


Kelley Brennan, City Attorney

Anasazi Gallery Trading, Inc.
A New Mexico corporation,

By: _____
Amjad N. Nassar
President

Amjad N. Nassar
individually

**CITY OF SANTA FE
FINANCE COMMITTEE**

**Anasazi Gallery Trading, Inc.
Respondent
Business License No. 15-00129176**

**BUSINESS LICENSE CEASE AND DESIST ORDER TO BE FORWARDED TO THE
CITY COUNCIL**

THIS MATTER came before the City of Santa Fe's Finance Committee upon request of the City Attorney's Office for the Respondent to show cause whether the Respondent has complied with the Business License Ordinance, SFCC 1987, Section 18-1.6B. The Finance Committee being advised in the premises finds grounds to issue a Cease and Desist Order for the following reasons:

Findings of Fact

1. In 2014, Mr. Amjad Nassar applied for and received a business license for Anasazi Gallery Inc.
2. The business address is 150 Washington Avenue, Suite 103, Santa Fe, NM 87501.
3. In June 2014, Anasazi Gallery Inc. requested a distress merchandise sale application. See City Exhibit #2.
4. The application stated the lease for the business would expire in fall of 2014. See City Exhibit #2.
5. Anasazi Gallery Inc. received a ninety (90) days permit for a distress merchandise sale up to October 3, 2014.
6. Mr. Amjad Nassar worked on site at Anasazi Gallery Inc.

**Anasazi Gallery Trading, Inc.
Respondent**

████████████████████ License No. 15-00129176

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7. On September 24, 2014, Anasazi Gallery Inc. requested a month extension for the sale distress until November 3, 2014.
8. On September 29, 2014, Mr. Amjad Nassar signed a lease extension on the property until 2017. See City Exhibit #1.
9. The lease extension referred to a new entity called Anasazi “Trading” to be on the property.
10. Anasazi Gallery Inc. did not inform city officials of the lease extension.
11. Anasazi Gallery Inc. did not request to withdraw its permit extension.
12. Anasazi Gallery Inc. did not inform city officials of the pending new name.
13. Anasazi Gallery Inc. continued to sell under its distress merchandise sale permit.
14. On November 3, 2014, Mr. Amjad Nassar closed Anasazi Gallery Inc.
15. On December 1, 2014, Mr. Amjad Nassar applied for a “new business” under the name Anasazi Trading Gallery under Business License No. 15-00129176. See City Exhibit #4.
16. Anasazi Trading Gallery was in the same location, with same named lessee, same type of business and with the same listed owner as Anasazi Gallery Inc.
17. On or about March 23, 2015, Mr. Nassar was sent a “Violation” letter by certified mail and first class mail to 150 Washington Avenue, Suite #103. See Exhibit #3.
18. This letter advised him that he would have an opportunity to attend the May 4, 2015 City Finance Committee Meeting at City Council Chambers to address these violations.
19. This letter advised him that he could present evidence and could provide witnesses and show cause why Anasazi Trading Gallery’s license should not be revoked.

20. On or about March 26, 2015, a representative for Anasazi Trading Gallery signed for the certified mail.

Conclusions of Law

1. The City of Santa Fe has jurisdiction over business licensees who obtain licensure in the City of Santa Fe under its Business License Ordinance. See SFCC 1987, § 18-1.
2. The City of Santa Fe has jurisdiction over Anasazi Trading Gallery under Business License No. 15-00129176.
3. City Code Section 18-1.8(A) states: “If, at the hearing before the finance committee, the person fails to show cause why the business license fee should not be revoked, the finance committee shall issue a cease and desist order ordering closing the business.”
4. Based on Findings of Fact #8-16, Anasazi Trading Gallery violated this provision.
5. City Code Section 18-1.6(B) states: “When a person is guilty of violating a regulation relating to the granting of a license, *or in the judgment of the governing body the public welfare* requires a license be revoked, the governing body may revoke the license.”
6. Based on Findings of Fact #8-16, Anasazi Trading Gallery violated this provision.
7. Based on Findings of Fact #17-20, City staff provided notice process for the administrative action for events.

ORDER

Anasazi Trading Gallery has failed to show cause why its license should be maintained:

- a. This matter should be placed on an upcoming agenda for the City Council;

Anasazi Gallery Trading, Inc.

Respondent

~~XXXXXXXXXXXX~~ License No. 15-00129176

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- b. The City Council should vote on whether to adopt this Cease and Desist Order to revoke Business License No. 15-00129176.

Councilor Carmichael Dominguez
Chairperson

Date:

FILED:

Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM

Zachary Shandler
Assistant City Attorney

Date:

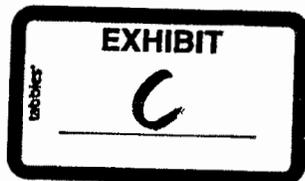
Anasazi Gallery Trading, Inc.
Respondent
Street Performer License No. 15-00129176

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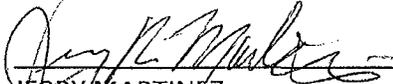
AFFIDAVIT OF JERRY MARTINEZ

I, JERRY MARTINEZ, being first duly sworn and under oath do depose and state as follows:

1. I am over the age of 18, and I have personal knowledge of the facts and information stated in this Affidavit.
2. I have been the bookkeeper and records keeper for Anasazi Gallery, Inc., a New Mexico corporation (the "Corporation").
3. At all times, Majdi F. Nassar was the only the only shareholder and owner of the Corporation.
4. Amjad N. Nassar, never had any ownership interest or profit sharing interest in the Corporation.
5. From 2012 through 2014, Amjad N. Nassar was an employee of the Corporation.
6. Amjad N. Nassar's responsibilities included the management and supervision of the Corporation's day-to-day operations, including the handling of all accounts payable, accounts receivable, artist and supplier relationships, and all landlord tenant matters.
7. Attach here a true and accurate copy (with personal information redacted) of the payrolls records for the Corporation showing that Amjad N. Nassar was an employee of the Corporation.
8. After the sale was concluded, Amjad N. Nassar purchased the remaining inventory of the Corporation (on terms), and the Corporation ceased doing business in Santa Fe, New Mexico.



Further Affiant Sayeth Naught.



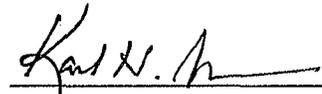
JERRY MARTINEZ

STATE OF NEW MEXICO)
COUNTY OF SANTA FE) ss.

The foregoing Affidavit was subscribed and sworn to by JERRY MARTINEZ
before me on this on this 30th day of December 2015.

My commission expires:

3-11-19



Notary Public

AFFIDAVIT OF AMJAD N. NASSAR

I, Amjad N. Nassar, being first duly sworn and under oath do depose and state as follows:

1. I am over the age of 18, and I have personal knowledge of the facts and information stated in this Affidavit.
2. I have never been shareholder of Anasazi Gallery, Inc., a New Mexico corporation (the "Corporation").
3. It is my understanding that the Corporation was owned totally by my brother, Majdi F. Nassar.
4. I made no financial contribution to or investment in the Corporation, and I made no loans to the Corporation.
5. I did not receive any distribution of any profit from the Corporation. I never any interest in or rights to share in any profits from the Corporation.
6. From 2012 through 2014, I was an employee of the Corporation.
7. My responsibilities included the management and supervision of the Corporation's day-to-day operations, including the handling of all accounts payable, accounts receivable, artist and supplier relationships, and all landlord tenant matters.
8. I attach here a true and accurate copy (with personal information redacted) of my personal tax returns for the years 2012, 2013 and 2014, which indicates my income from all sources for those years.



9. When my brother decided to have the Corporation cease doing business in the fall of 2014, I formed my own company, Anasazi Gallery Trading, Inc., a New Mexico corporation.

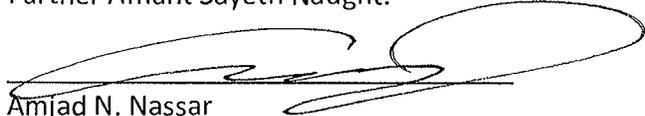
10. My brother moved his business operations to Colorado, and I was unwilling to move my family to Colorado to continue working for the Corporation or any new company he might form.

11. Through my new company, I purchased the remaining inventory of the Corporation (on terms), and began operating my own business in the same locations as the Corporation.

12. I began operations for my own account and through my own company on December 1, 2014, I have never made any distributions of profits to any party, except myself, and the only owners of my company are me and my wife.

13. I have read, understand and agree with the Settlement Agreement reached with the City of Santa Fe.

Further Affiant Sayeth Naught.


Amjad N. Nassar

STATE OF NEW MEXICO)
COUNTY OF SANTA FE) ss.

The foregoing Affidavit was subscribed and sworn to by Amjad N. Nassar before me on this on this 30th day of December 2015.

My commission expires:

3-11-19


Notary Public