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16998

June 2, 2005

VIA HAND DELIVERY
Jerrily R. Kress, FAIA
Director, Office of Zoning
Government of the District of Columbia
Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210 South
Washington, D.C. 20001

Re: 2210 Adams Place N.E.: Response to ANC 5-B's Opposition

Dear Mr. Kress:

Bannum, Inc. ("Bannum") seeks leave to respond to the oppositions submitted by counsel for ANC 5-B and DCRA that were only received on June 1 and June 2, 2005.[1] DCRA's opposition in particular makes new claims of which Bannum had no prior notice and which we believe we must address in order for this Board to be able to resolve this motion for stay. Bannum also requests oral argument on its request for a stay so that the legal arguments can be fully amplified. The other tribunals that have denied Bannum's attempts to stay the revocation of its Certificate of Occupancy ("CofO") and preserve its appellate rights have been almost entirely based on a lack of jurisdiction (which makes any other statements dictum). None of these tribunals have decided or addressed the specific legal issues presented by the Department of Consumer and Regulatory Affairs' ("DCRA") treatment of an existing order of an Administrative Law Judge ("ALJ"), which as DCRA now does not contest, ordered the administrative proceeding to be continued until the D.C. Court of Appeals decided Bannum's appeal on the merits. DCRA Opposition, p. 3. None addressed the statutory and legal basis which such actions, including appeals to this Board of revocations of CofOs, are allegedly based.

Preliminary Matters

ANC 5-B counsel first attempts to mislead this Board by mischaracterizing the order of ALJ Charles McCoy. ANC 5-B counsel points to the "title" of Bannum's Motion for "*Continuance, Not Stay*" (emphasis in ANC 5-B letter), apparently on the basis that a "continuance" is substantively different that a "stay" in this context. Here, both terms lead to the same result—DCRA was ordered not to take any further action to

[1] ANC 5-B did not appeal the Department of Consumer and Regulatory Affairs ("DCRA") Certificate of Occupancy ("CofO") issued to Bannum, and has not moved to intervene in this proceeding.

BZA
Case No. 16998
Exhibit No. 112

Board of Zoning Adjustment
District of Columbia
CASE NO. 16998
EXHIBIT NO. 112

1. the content of Bannum's Motion, where Bannum expressly asked the ALJ to "enjoin" DCRA from proceeding with a revocation of Bannum's CofO until the D.C. Court of Appeals decided Bannum's appeal of the Board's Order on the merits, Ex. 7, p.1, and Bannum's counsel's oral argument at the hearing; and

2. Judge McCoy's actual oral order at the August 6, 2004 hearing, where he explained his reasoning for granting Bannum's motion: Judge McCoy pointed out that the CofO revocation was based solely on the BZA's Order, and if the Order was reversed, there would be no basis for a revocation.

Further, ANC 5-B's counsel persists in making "possibly" slanderous and definitely unsupported claims regarding DCRA's issuance of Bannum's CofO in spite of his failure to submit one iota of evidence at the hearing to support these claims. The "facts are the facts," not counsel's self-serving speculation. Bannum proceeded with the advice and guidance of well-respected zoning counsel who practices often before this Board. Ultimately, although Bannum disagrees with the Board's Order, as did one of its members, the Board recognized that the meaning of this zoning law was one of first impression. The Board surely must recognize in fairness that no contractor could have reasonably predicted the outcome particularly after DCRA issued its two concurrences.

ANC 5-B's counsel then exhorts the BZA to deny this stay with a catchy phrase--"the law is the law". The law provides for an appeal. All Bannum is seeking is the ability to exercise that right with its business intact. Moreover, no "law" is cited in ANC 5-B counsel's letter that even questions the law cited in Bannum's request for a stay. Indeed, as discussed below, that law shows that DCRA's "rescission" and revocation are in patent violation of D.C. statutes.

DCRA's factual statements also cannot withstand scrutiny, as discussed below.

Bannum's Appeal Remains Pending before the Office of Administrative Hearings

In DCRA's April 27, 2004 notice of intended revocation of Bannum's CofO, DCRA conceded that the revocation proceeding was a "contested case." Bannum Ex. 8. Under DC ST §2-502(8), a "contested case" is a proceeding involving a decision of a D.C. agency that affects a person's vested legal rights after a hearing. Under DC ST §2-509, a person aggrieved by a decision by the Mayor or an agency regarding its vested rights in a "contested case" has a right to a hearing. An Administrative Law Judge ("ALJ") is the entity delegated to conduct that hearing. DCRA admits this.

In this case, Bannum participated in a hearing before an ALJ (ANC 5-B counsel attended). Judge McCoy granted Bannum's motion and stayed (or continued) the case until the D.C. Court of Appeals ruled on the merits of Bannum's appeal. A transcript of that order exists. Judge McCoy further indicated, as District Counsel conceded in writing, that "the scheduling of any further administrative hearing would be subject to another entity" where the case would be "transferred." Ex. 6, p. 3., fn. 3. DCRA's opposition concedes this fact. DCRA Opp. at 3.

ANC 5-B counsel could have moved to intervene in that proceeding and appealed or sought reconsideration of the ALJ decision. Apparently recognizing that there was no chance of showing that the ALJ had abused his discretion in maintaining the status quo, a different type of pressure was brought on DCRA to take action that, as shown below, directly violated statutes and the ALJ order.

As DCRA's actions now show, the case under the ALJ's predecessor entity, the Office of Adjudication ("OAD"), No. 2004-OAD-013, was transferred to the new Office of Administrative Hearings ("OHA"). See Ex. 6, p. 3, fn. 3. On May 20, 2005, DCRA moved to dismiss that case but not for lack of jurisdiction, which by its motion, DCRA admits exists in the OAH. Instead, DCRA merely argued that it had rescinded the prior notice of revocation and the new revocation was properly before the BZA. Ex. 9.

DCRA's actions show that the OAH, not the BZA, was the "new entity" referred to in the District's brief. Ex. 6, p. 3, fn. 3. That existing case, of which Bannum previously was unaware, has been and remains within the OAH's jurisdiction.

Under DC ST §2-1831.13(c), DCRA was prohibited from taking any "decisional actions" on a pending case before the OAH. Such "decisional actions" obviously include DCRA's May 4, 2005 revocation and its May 31, 2005 notice of violation in which enforcement is threatened. Therefore, without regard to the ALJ's order staying proceedings, DCRA's notice of revocation and revocation while that case was pending are illegal and void. On this basis alone, this Board should stay any revocation action.

No Legal Basis Exists for Issuing a Revocation in the OAH Statute

Before the federal court and the D.C. Court of Appeals, the District of Columbia argued that the "Office of Administrative Hearings Establishment Act of 2001" ("Act"), which was effective in October 2004, changed the statutory scheme and somehow authorized DCRA's "rescission" and revocation of the CofO. DCRA does not make this claim now because this law shows the exact opposite effect.

Contrary to any claim that zoning decisions were removed from the OAH, all DCRA decisions, without limitation, were expressly included in the Act. See DC ST §2-1831.03(b)(2). Neither the Act nor its legislative history purported to change the definition of a "contested case" in DC ST §2-502(8). Neither the statutory language of the Act nor its legislative history otherwise purported to change the right to a hearing before the OAH of a person whose rights in a CofO were revoked under DC ST §2-509 or limits the types of cases before any particular ALJ. Finally, nothing in the Act or its legislative history made any reference to the BZA's jurisdiction under DC ST §6-641.07. In sum, nothing in this statute supports DCRA's "rescission" or revocation.

DCRA's claim that the case pending before the OAH is different because it is a CofO is not based on anything in this statute.

A New Regulation Authorizing BZA Review Does Not Apply and is Void

In December 2004, after the ALJ issued his order and the case was transferred to the OAH, DCRA issued a new regulation that authorized appeals of DCRA revocations of a CofO to the BZA. See 12A DCMR §110A (December 2004). Nothing in the OAH Act or its legislative history or any other statute supports this regulatory change. Moreover, as shown below, to the extent DCRA argues that the BZA has exclusive jurisdiction over revocations, this regulation is in conflict with DC ST §2-502(8), §2-509, and is unsupported by DC ST §6-641.07. Upon further review, Bannum believes appeals of revocations of CofOs or other vested rights should only be before the OAH first.

Under the D.C. Administrative Procedures Act, when a person obtains a legal right to operate a type of facility in the District, any decision to revoke that vested right has always been a "contested case" as defined in DC ST §2-502(8):

> The term "contested case" means a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law (other than this subchapter), or by constitutional right, to be determined after a hearing before the Mayor or before an agency, but shall not include: .... (exceptions not applicable).

This is exactly how DCRA admittedly viewed its April 27, 2005 notice of revocation. Under this statutory scheme, the person whose right is being revoked is granted a hearing before the Mayor's delegate, here an ALJ under DC ST §2-509. This is what transpired with Bannum before DCRA was somehow motivated to take its April 21, 2005 actions.

In contrast, DC ST §6-641.07 (2001), which grants certain persons a right to a hearing before this Board, was intended to address in a statute, common law nuisance actions and actions by persons who sought, but were denied vested rights related to zoning laws. This is shown by the specific types of appeals that can be taken to the BZA in DC ST §6-641.07(f):

> Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of the Inspector of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map adopted under this subchapter. (emphasis added).

The difference in a statute governing appeals of agency decisions "granting or refusing" building permits or "granting or withholding" a CofO and the statutes governing appeals to the OAD, now the OAH, is readily apparent.

In hearings of "contested cases" before the OAH, a hearing is provided for disputes over vested rights which a person directly possesses under law. In this case, Bannum's vested right is the right to operate Bannum's facility which DCRA granted to Bannum in the CofO.

In contrast, the BZA statute provides hearings only to "aggrieved persons" or "affected" D.C. agencies relating to either (a) the "granting" of a CofO, i.e. appeals to persons who object to the granting of a vested legal right related to zoning to another person, or, (b) the "withholding" of a CofO or other zoning right by a person who does not possess this right. In sum, the BZA is a forum where persons without vested rights may turn.

The phrase "administrative decision based in whole or in part upon any zoning regulation or law" cannot be read in a vacuum to include revocations of a CofO. To be in harmony with the specific language of the provision, this phrase can only mean an administrative decision not involving the revocation of a vested right. Such rights are legally distinguishable from the right to bring a "nuisance" type case at the BZA. Compare Konstantopoulos v. Town of Whatley, 424 N.E.2d 210, 216 (Mass. 1981) with Goto v. BZA, 423 A.2d 917, 922 (D.C. 1980). Only after the ALJ has ruled on a contested case, can it proceed to the BZA. See Rogers Brothers Custodial Services, Inc. v. Board of Zoning Adjustment, 846 A.2d 348 (D.C. 2004). That is why prior to December 2004, hearings based on the revocation of a CofO were before the DCRA ALJ, and not the BZA. See 12A DCMR §108.13 (2004).

Therefore, the new regulation purporting to change this statutory scheme, to the extent it purports to remove or nullify jurisdiction of the OAH over revocation proceedings, is itself illegal since it was promulgated without any statutory authority and is in conflict with the existing statutory scheme.

In any event, as noted above, this new regulation placing these appeals before the BZA was not made retroactive and has no bearing on this pending proceeding before the OAH.

DCRA's Latest Contentions Support Bannum's Legal Position

DCRA now claims for the first time that the rescission of the April 27, 2004 order dismissed the charges against Bannum. DCRA further alleged that "[c]urrently, Bannum is not being charged with any DCMR violations. Neither of these claims withstand scrutiny.

The April 21, 2005 notice of revocation does not "dismiss" any charges. DCRA's motion does not claim any charges were dismissed. Indeed, a dismissal would be binding on the Government since no new facts exist (the BZA decision existed before the dismissal) which would be grounds to reinstitute the charges. The claim that no such charges are currently being made is belied by DCRA's May 13, 2005 notice to Bannum (and to the BOP) that Title 11 charges are being filed and will be enforced. Exs. 10, 11.

DCRA's distinctions between the two notices are nothing more than the result of how revocations were handled in the existing statutory scheme, which has not changed, and the new regulation discussed above.

The reality is that this rescission was issued in direct violation of an order by the ALJ that no action was to taken until the D.C. Court of Appeals decided the case. DCRA had no authority under the new regulation to violate that order. Moreover, as explained above, under DC ST §2-1831.13(c), even if the new regulation applied, no "decisional action" could be taken while the case before the OAH was pending.

A Stay is Appropriate Here Under the Legal Standard

The above and other substantial legal issues are before the OAH in a pending case that preceded the revocation or the appeal to this Board. Indeed, the jurisdiction of this Board to decide revocation actions is at issue. This Board's March 31, 2004 Order is before the D.C. Court of Appeals and should be scheduled for oral argument in the near future and involves a number of issues of first impression as well as Constitutional issues.

The fact that the motions panel of the D.C. Court of Appeals noted that the claims did not meet the injunction standard for "likelihood of success on the merits" is dictum. The panel first found it lacked jurisdiction which automatically makes any additional grounds dictum since the Court by its own statement, found that it had no power or authority over the matter.

Further, a finding under an injunction standard by a motions panel without argument or appellate briefs is obviously not the same as a decision on the merits by the Court's merits panel. Otherwise, there would be no need for the Court to retain jurisdiction over and process the case.

Moreover, under Washington Metropolitan Transit Commission v. Holiday Tours, 559 F.2d 841 (D.C. Cir. 1977), the legal standard for granting a stay does not focus on the likelihood of success on the merits in the same way since it is recognized that the trial court deciding the motion believed its holding was correct. Rather, the standard is the whether significant, undecided legal issues of first impression exist. Bannum believes the BZA should conclude that the zoning issues in this case meet this standard.

Finally, contrary to ANC 5-B's legally unsupported speculation, the real harm to Bannum if a stay is denied is substantial and without remedy— the loss of its CCC and termination of its Federal Bureau of Prisons contract, which has already been threatened. Ex. 11. There are no damages available to Bannum now or in the future in the context of its appeal at the D.C. Court of Appeals or otherwise. The BOP and DCRA are immune from damage suits based on the result of a BZA zoning order, as ANC 5-B counsel should know.

ANC 5-B's claim that Bannum placed its CCC in an isolated Commercial-Manufacturing district in "bad faith" and should be punished is illogical and totally

unsupported by any facts. Bannum only located its facility there on advice of counsel and after DCRA concurred, not once, but twice, that legal zoning existed.

The fact that zoning was found illegal by this Board, based on an analysis that could not have been reasonably anticipated, shows the opposite of bad faith. ANC 5-B's counsel's claim that this Board found that Bannum had "deceived the D.C. Government" is what ANC 5-B counsel alleged, not what the Board found.

What is significant in terms of granting a stay and with all the hyperbole and invective in the ANC 5-B letter, is that a key factual claim is missing—that Bannum's operation of the federal CCC under the existing ALJ order has caused harm to any human being, business, or the public. DCRA is also studiously silent on this matter. That is because Bannum's CCC has only brought benefits to the District of Columbia by enabling the BOP to assign selected D.C. felons who have paid their debt to society in federal prisons around the country, to successfully transition into D.C. society with jobs in the short period before they will in any event be fully released into D.C. society. The witnesses from ANC 5-B admitted that a CCC is a good institution and Bannum's CCC has had no problems. The public interest in the continued operation of this CCC weighs strongly in favor of granting a stay.

CONCLUSION

ANC 5-B has offered no facts or law that support the position that Bannum's motion for a stay of the revocation should be denied. The BZA should respect the OAH's jurisdiction over the revocation currently exercised by the OAH in a pending case, No 2004-OAD-013, as well as the existing ALJ order entered therein. Indeed, because that case is pending, DCRA's revocation is illegal. DC ST 2-1831.13(c).

Alternatively, this Board should adopt the order issued by the DCRA ALJ and stay revocation action until the D.C. Court of Appeals decides this appeal of this Board's order on the merits. The ALJ's decision was reasonable and has proven to be a benefit to the public, which Ms. James and other ANC 5-B members conceded, results from the transition into society provided to D.C. felons in a CCC.

Respectfully submitted,



Shawn C. Whittaker, Esq.
Michael A. Gordon, Esq.
Counsel for Bannum, Inc.

cc. Bennett Rushkoff, Esq. (via facsimile and regular mail)
Donald C. Temple, Esq. (via facsimile and regular mail)

HOLMES, SCHWARTZ & GORDON
ATTORNEYS AT LAW

WASHINGTON, D. C. AND
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August 4, 2004

VIA HAND DELIVERY
E. Savanah Little, Esquire
Chief Administrative Law Judge
Department of Consumer and Regulatory Affairs
Office of Adjudication
941 North Capitol Street N.E., Suite 9100
Washington, D.C. 20002

Re: 2210 Adams Place N.E.; Bannum's Position and Request for Postponement

Dear Ms. Little:

Bannum, Inc. presents the following letter in support of its position that Government should not revoke its Certificate of Occupancy ("CofO") for 2210 Adams Place, N.E. for use as a federal Community Corrections Center ("CCC"), a "temporary correctional institution" for a period not to exceed three years. See 11 DCMR §801.7(k) ("Section 801.7(k)"). Bannum believes, as did the District of Columbia Consumer and Regulatory Agency ("DCRA"), before and during the proceeding before the Board of Zoning Adjustments ("BZA"), that DCRA's zoning for this CCC was completely legal.

DCRA's current notice of intent to revoke the CofO[1] was based solely on the BZA order finding Bannum's building permit was improperly issued for lack of matter of right zoning. Attachment ("Att.") 1. Bannum appealed the BZA's order to the District of Columbia Court of Appeals. The Court's briefing schedule, issued after denying ANC 5-B's motion for summary affirmance, shows that briefing will be completed by October 2004 which likely will result in a decision this year. Att. 2. Bannum requests postponement of these proceedings until the Court decides the appeal.

Bannum also filed a motion for a stay of the BZA order and to enjoin the revocation of the CofO, an outcome of these proceedings[2], which is pending. Since the revocation of the CofO is based solely upon the BZA's order, if as expected, the Court reverses that order, nothing will support revocation of the CofO. Indeed, in its opposition to Bannum's motion, DCRA's position is that the BZA's order is not final because a written decision on Bannum's and DCRA's motions for reconsideration has not been issued. This raises questions as to whether DCRA has a basis to revoke Bannum's CofO.

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[1] The Advisory Neighborhood Commission ("ANC") 5-B, which appealed the issuance of Bannum's building permit because of allegedly illegal zoning did not appeal the CofO to the BZA.

[2] While Bannum has other legal arguments not addressed in the BZA order, see pp. 9-10 infra, Bannum sought injunctive relief because DCRA took no position on these arguments at the BZA and issued the notice of intent to revoke the CofO.

EXHIBIT
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

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Office of the Director

April 27, 2004

BY PERSONAL SERVICE
David A. Lowry, Executive Director
BANNUM, INC.
2210 Adams Place, N.E.
Washington, D.C. 2000

and

BY FACSIMILE
Shawn C. Whittaker, Esquire*
9055 Comprint Street, Suite 340
Gaithersburg, Maryland 20877

Re: 2210 Adams Place, N.E.
Washington, D.C. 20002

NOTICE OF INTENT TO REVOKE CERTIFICATE OF OCCUPANCY NO. CO53679

This is official notice to you that the Department of Consumer and Regulatory Affairs, Building and Land Regulation Administration (DCRA), proposes to revoke the Certificate of Occupancy, No. CO53679, issued to the Bannum Corporation. Said permit was issued on or about May 2, 2003, and authorized the company to operate a "temporary correctional institutional[sic]" at the premises located at 2210 Adams Place, N.E, in Washington, D.C. This notice is issued pursuant to D.C. Official Code § 1-1509 (a)(2003) which states: "In any contested case, all parties thereof shall be given reasonable notice of the afforded hearing by the Mayor or the agency as the case may be . . ."

The charges and specifications in support of this action are as follows:

CHARGE I. You are in violation of D.C. Mun. Reg. tit. 11 § 3203.11 which reads, in pertinent part: ". . . [T]he issuance of a certificate of occupancy for the use of a structure, or part thereof, if the establishment of the use is dependent upon the erection, construction, conversion, or alteration of the structure, or part thereof; provided: (b) A building permit shall be issued in compliance with § 3202."

* Mr. Whittaker has agreed to accept service for his client, Bannum Corporation, although he is not the registered agent for service.

EXHIBIT
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SPECIFICATION A. On or about September 9, 2003, the Board of Zoning Adjustment (BZA or Board) issued an oral decision in Appeal No. 16988 of the Advisory Neighborhood Commission 5B, taken from the administrative decision of David Clark, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B425438 (for the renovation of a warehouse for use as a community corrections center), and revised Building Permit No. B448325. A written decision was issued by the BZA on March 31, 2003. The order became final ten days after receipt of the written decision pursuant to 11 DCMR § 3125.9 (2003).

The BZA concluded, among other things, that both the building permit issued to the Bannum Corporation on December 12, 2002 for a 'community corrections center' to "[c]hange tenant warehouse space to 150-bed Community Corrections Center," and the subsequent revised building permit, issued on January 17, 2003 (restricting the use for three year period), were issued in error by DCRA.

The 'use' designated in the building permit - - a community corrections center - - was not a permitted use in a C-M-2 District. Specifically, the Board rules that the facility does not meet the requirements of § 801.7(k), (i.e., the alternative optional 'use' which DCRA had contemplated). The BZA determination regarding the permitted use of the subject property is similarly applicable to the Certificate of Occupancy No. CO53679, issued to Bannum, on or about May 2, 2003. The certificate, which authorized the company to operate a "temporary correctional institutional[sic]" at the premises located at 2210 Adams Place, N.E., in Washington, D.C., was also issued in error since the building was never approved for that use. Given, the BZA decision prohibiting the 'use' requested by Bannum in its application for a building permit and certificate of occupancy, and the 'use' authorized by DCRA when it granted the building permit and the certificate, Bannum cannot continue to occupy the premises under Certificate of Occupancy, No. CO53679. Moreover, the revoked certificate cannot serve as a basis for any other certificate of occupancy.

CHARGE 2. You are in violation of D.C. Mun. Reg. tit. 12 § 110.1.1, which requires "... a building or structure hereafter erected shall not be used or occupied in whole or in part until the certificate of occupancy has been issued by the code official, in accordance with this Section and Title 11 DCMR, the District of Columbia Zoning Regulations." *Id.*, D.C. Mun. Reg. tit. 12 § 110.1.1 (January 9, 2004). Section 110.5 reads in pertinent part: "[T]he Director is authorized to revoke a certificate of occupancy pursuant to ... Sections 110.5.1 through 110.5.5." Section 110.5.1 provides: "[A]ny certificate of occupancy previously issued or issued pursuant to Section 110 shall be revoked by the Director, after notice, if the actual occupancy does not conform to that permitted."

SPECIFICATION A. On or about May 2, 2003, Bannum Corporation applied for, and obtained a Certificate of Occupancy, No. CO53679, which authorized the company to

operate a "temporary correctional institutional[sic]" at the premises located at 2210 Adams Place, N.E., in Washington, D.C. Following an appeal, the BZA found the building permit for the subject property had been issued in error. The proposed use of the facility as a "temporary correctional facility" was not permitted at that location. DCRA, therefore, has notice that the actual occupancy of the premises at 2210 North Adams Place, N.W., in Washington, D.C., cannot be used for the purpose requested by Bannum Corporation or approved in the certificate of occupancy. Since the certificate was issued for a 'use' which the BZA determined was not permitted in a C-M-2 District, the continued occupancy of the facility directly contravenes the Order and Decision of the Board of Zoning Adjustment. BZA Order 16998 (Sept. 9, 2003). Pursuant to the BZA decision, the Director is exercising his authority to revoke the certificate.

You have the right to challenge this proposed action to revoke your certificate of occupancy. In order to exercise this right you must request a hearing in writing within fifteen (15) days of your receipt of notice. Your request should be mailed first class U.S. mail postage pre-paid and addressed to E. Savannah Little, Esq., Chief Administrative Law Judge, Department of Consumer and Regulatory Affairs, Office of Adjudication, 941 North Capitol Street, N.E., Suite 9100, Washington, D.C. 20002. Alternatively, you may hand-deliver your written request for a hearing to the same address within fifteen (15) calendar days of your receipt of this notice.

Additionally, if you decide to challenge this proposed action, please send a copy of your request for a hearing, pleading or other written communication in this case to Lisa A. Bell, Esquire, Office of the General Counsel, Department of Consumer and Regulatory Affairs, 941 North Capitol Street, N.E., Suite 9100, Washington, D.C. 20002. Please note that if you do not request a hearing within the time specified in this notice, or if you fail to appear to a scheduled hearing, you shall be deemed to have conceded the validity of the charges and specifications stated in the notice and a final notice of revocation will be entered against you.

Should you request a hearing, you will be notified by the Office of Adjudication of the hearing date and time.

You may appear personally at such hearing and you may be represented by legal counsel. You have the right to produce witnesses and evidence in your behalf and to cross examine witnesses against you, to examine evidence produced, and to have subpoenas issued on your behalf to require the production of witnesses and evidence.

If you or any witnesses you intend to call are deaf or, because of a hearing impediment or language barrier, cannot readily understand or communicate the spoken English language.

you or your witness may apply to the Office of Adjudication for the appointment of a qualified interpreter.

If you have any questions, you may contact, Julie S. Lee, Esq., Acting General Counsel, on (202) 442-8475.

Sincerely,

Denzil Noble
Administrator
Building and Land Regulation
Administration

cc: David Clark, Director, DCRA
Theresa Lewis, Deputy Director,
Operations
Leila Franklin, Deputy Director
for Compliance and Investigations
Savannah Little, Esquire, Chief
Administrative Law Judge, OAD
Julie S. Lee, Esq., Acting General Counsel
Winnie Hinston, Compliance Officer, OIWM

District of Columbia
Office of Administrative Hearings
Post Office Box 77718
Washington, D.C. 20013-8717

Department of Consumer and Regulatory Affairs,	)	
v.	)	2004-OAD-013
Bannum, Inc.	)	

Motion to Dismiss

The Department of Consumer and Regulatory Affairs (DCRA) hereby requests a dismissal of Bannum, Inc.'s (Bannum) appeal of the Notice of Intent to Revoke a Certificate of Occupancy (Notice) issued to Bannum on or about April 27, 2004.[1] The Notice has not been adjudicated by this Court or its predecessor, the Office of Adjudication.

On April 21, 2005, DCRA rescinded the Notice and issued a new Notice of Revocation that became effective on May 5, 2005. That Notice properly provided that Bannum's appeal rights were to the Board of Zoning Adjustment (BZA).[2]

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[1] The Certificate of Occupancy approved the use and operation of the premises for a community correctional center at 2210 Adams Street, N.E., Washington, D.C. On or about March 31, 2004, the Board of Zoning Adjustment (BZA) ruled that DCRA erred in the issuance of a building permit to Bannum for the construction of a community correctional facility, thus rendering the Certificate of Occupancy invalid. *See* BZA Appeal No. 16998. At the time the BZA issued its decision, Bannum was operating the facility pursuant to Certificate of Occupancy, No. C053679.

[2] Bannum appealed the enforcement action and requested a stay to the BZA and D.C. Superior Court, D.C. Court of Appeals and U.S. District Court in which related matters were pending. All of Bannum's requests for a stay of the enforcement actions were denied.



Given that the instant enforcement action by DCRA has been rescinded, and the adjudication of the new enforcement action lies in another forum, there is no matter pending for resolution before this forum.

Respectfully submitted,

Lisa A. Bell, Esquire
Office of the General Counsel
D.C. Department of Consumer and
Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20001
(202) 443-8475

Certificate of Service

I hereby certify that a copy of the foregoing has bee sent, first class mail, postage prepaid, on May 24 2005, to:

Shawn Whittaker, Esquire
9055 Comprint Court
Gaithersburg, Maryland 20877-1310

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR

May 13, 2005

BY PERSONAL SERVICE AND CERTIFIED MAIL
BANNUM, INC
2210 Adams, Street, N.E.
Washington, D.C. 20001

Re: Certificate of Occupancy No. 53679 (issued 5/2/03)

Dear Mr. Whittaker:

The Certificate of Occupancy held by Bannum, Inc. for the community correctional facility at 2210 Adams Street, NE Washington, D.C. was revoked effective May 5, 2005. An inspection of the premises conducted May 12, 2005, by the Department of Consumer and Regulatory Affairs (DCRA), revealed that Bannum, Inc. is still occupying and operating a facility at 2210 Adams Street, N.E., Washington, D.C.

The occupancy of the premises is in violation of both the zoning regulations, Title 11 of the D.C. Municipal Regulations, and the D.C. Official Code § 6-1406 (2004). Bannum, Inc. is advised that the DCRA is referring this matter to the Office of the Attorney General for enforcement action, and intends to seek sanctions, fines, penalties, and other relief provided for by law.

Sincerely,

Toye Bello
Zoning Administrator

cc: Patrick Caravan, Director
Marceline Alexander, Deputy Director
Julie Lee, General Counsel

By Facsimile
Shawn Whittaker, Esquire
9055 Comprint Court
Gaithersburg, Maryland 20877-1310

EXHIBIT
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U.S. Department of Justice

Federal Bureau of Prisons

Attn: CCC Contracting
320 First Street, NW - Room 5006

Washington, DC 20534

May 20, 2005

"By Personal Service and Certified Mail"
Mr. David A. Lowry
Executive Director
Bannum, Inc.
8726 Old County Road 54, Suite B
New Port Richey, Florida 34653

Re: Cure Notice - Contract DJB200576 (Washington, D.C.)

Dear Mr. Lowry:

The Bureau of Prisons received a copy of a letter from the Department of Consumer and Regulatory Affairs (DCRA) dated May 13, 2005, concerning the Certificate of Occupancy (COC) at Bannum, Incorporated's (Bannum) facility located at 2210 Adams Street, NE, Washington, DC. The letter states that Bannum's COC was revoked effective May 9, and "DCRA is referring this matter to the Office of the Attorney General for enforcement action, and intends to seek sanctions, fines, penalties, and other relief provided for by the law." We understand that "other relief" could include action to close the facility.

Bannum was awarded Contract DJB200576 for Community Corrections Center (CCC) services in Washington, DC, on November 16, 2001. By signing the Standard Form (SF) 26 Award Document on October 25, 2001, Bannum agreed to perform the contract in accordance with the Statement of Work (SOW) and comply with all terms and conditions of the contract which began on May 2, 2003. Retaining a COC is a condition of the contract terms (see SOW, pages 21-22).

You are hereby notified that the BOP considers Bannum's revoked COC at the facility located at 2210 Adams Street, NE, Washington, DC, a condition that is endangering performance of Contract DJB200576. Therefore, unless this condition is cured within 10 days afer receipt of this notice, the Government may terminate for default under the terms and conditions of Federal Acquisition Regulation (FAR) 52.249-8, Default (Fixed Price Supply and Service) clause of this contract.

If you have further questions, please contact me at (202) 307-3070.

Sincerely,

Jacqueline Ponders
Contracting Officer

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FROM : FAX NO. : May. 27 2005 03:23PM P2
05/27/2005 15:01 FAX 202 307 2780 DOJ-FBP CCC

U.S. Department of Justice

Federal Bureau of Prisons
Attn: CCC Contracting
320 First Street, NW - Room 5006

Washington, DC 20534

May 27, 2005

"Facsimile and Certified Mail"
Mr. John D. Rich
Corporate Counsel
Bannum, Inc.
9726 Old County Road 54, Suite E
New Port Richey, Florida 34653

Re: Cure Notice - Contract DJB200576 (Washington, D.C.)

Dear Mr. Rich:

This is in response to your letter dated May 26, 2005, requesting an extension to the Cure Notice issued on May 20. The Cure Notice gave Bannum 10 days to respond to the Bureau of Prisons (BOP) with a cure in regards to Bannum's Certificate of Occupancy being revoked which is endangering the performance of Contract DJB200576.

After careful consideration, I have extended the date that you are required to respond to the Cure Notice to June 8. This extension is being granted, in part, because you have stated that you have a hearing with the Board of Zoning Adjustment (BZA) on June 7. In addition, you are reminded that Bannum is required to update the BOP in the event of any changes to the current status of your property, and provide us an update immediately following the hearing with the BZA.

If you have further questions, please contact me at (202) 307-3070.

Sincerely,

Jacqueline Ponders
Contracting Officer