

7/18/2012

In reference to agenda item #26904

*Public Hearing – New License*

*Orpheum of Madison Inc. – Orpheum Theatre*

**Exhibit 1.** Court document and sworn testimony from Eric Fleming stating that he has never had any involvement in Orpheum of Madison.

**Exhibit 2.** Document showing Eric Fleming as sole member of Orpheum of Madison.

**Exhibit 3.** Orpheum Theatre Company of Madison's Department of Revenue sales tax filing and payment history. (This is the company that holds the liquor license.) No taxes have been filed or paid for this account since July 2011.

**Exhibit 4.** Document stating that Eric Fleming is the sole authorized representative of license holding company Orpheum Theatre Company of Madison Inc.

**Exhibit 5.** Court document stating that everything Eric Fleming owns is under receivership.

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STATE OF WISCONSIN      CIRCUIT COURT      DANE COUNTY  
   Branch 1

KILBOURN MERCHANT  
CORPORATION, ET AL,

Plaintiffs,      ORDER TO SHOW CAUSE  
   Testimony of Eric Fleming

vs.

Case No. 11-TJ-383

ERIC FLEMING, ET AL,

Defendants.

HONORABLE JOHN W. MARKSON  
Judge Presiding

Appearances:

Mr. Roger A. Sage, Attorney  
at Law, Madison,  
Wisconsin, appearing for  
Assigned Creditor, State  
Street Resources, LLC;

Mr. Rhyan J. Lindley,  
Attorney at Law, Madison,  
Wisconsin, appearing for  
Eric Fleming,  
who also appears.

DATE OF PROCEEDINGS:  
April 17, 2012

Debra B. Jenson  
Court Reporter

I N D E X

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ERIC FLEMING	
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(PARTIAL TRANSCRIPT - TESTIMONY OF ERIC FLEMING)

ERIC FLEMING,

being first duly sworn on oath to tell the  
truth, the whole truth, and nothing but the  
truth, testified as follows:

DIRECT EXAMINATION BY SAGE:

Q Mr. Fleming, you have been sworn. You have Exhibit 44  
before you?

A Yeah.

Q Were you present for a supplemental examination on  
January -- okay, first -- just a moment. You filed a  
lawsuit in Dane County, 11-CV-5550, Fleming v.  
Paraskevoulakos, is that correct?

A I'm not sure if that's the right number, but I'll take  
your word for it.

Q And you filed that in December, late December of last

1 Q Are you involved at all in Orpheum of Madison, Inc.?

2 A Not any longer, no.

3 Q Were you president and sole shareholder of that  
4 corporation at any time?

5 A No.

6 Q Have you ever been sole shareholder of that corporation?

7 A No.

8 Q Have you ever been president of that corporation?

9 A No.

10 Q Have you provided documents to a bank indicating that  
11 you're the sole shareholder of Orpheum of Madison, Inc.?

12 MR. Lindley: Objection, relevance.

13 THE COURT: How does this relate?

14 MR. SAGE: Orpheum of Madison, Inc., has  
15 bid \$2,225,000 for one of the real estate properties that  
16 Mr. Fleming has transferred to his girlfriend, and I  
17 believe he has an interest in that.

18 THE COURT: Okay. Well, I'll allow it. I  
19 am sorry, did you answer the question?

20 THE WITNESS: I guess I didn't understand  
21 the question. Repeat it.

22 Q (By Mr. Sage) The question is have you provided any  
23 documents to any bank indicating you are the sole  
24 shareholder of Orpheum of Madison, Inc.?

25 A No.

1 Q Or the president of Orpheum of Madison, Inc.?

2 A No.

3 Q Are you using the \$175,000 cash to finance your lawsuits?

4 A No.

5 MR. SAGE: I have no further questions.

6 THE COURT: Okay. Thank you, Mr. Sage.

7 Mr. Lindley?

8 MR. LINDLEY: I just have a couple of  
9 questions.

10 CROSS EXAMINATION BY MR. LINDLEY:

11 Q If you could look at Exhibit 8, please.

12 A Okay.

13 Q Exhibit 8 purports to be a deposit slip whereby you  
14 deposited \$175,000 into your account, is that correct?

15 A Correct.

16 Q And if you look on the second page of Exhibit 8, on  
17 September 1, 2011, is it correct to state that you then  
18 withdraw that \$175,000 from the same account?

19 A Yes.

20 Q And if you look at Exhibit No. 7, which is the order from  
21 hearing of August 26, 2011. Do you have Exhibit 7 in  
22 front of you?

23 A Yes.


24 Q This order is dated September 9, 2011, correct?

25 A Correct.

1 STATE OF WISCONSIN)  
2 COUNTY OF DANE ) ss.  
3 )

4 I, Debra B. Jenson, Official Circuit  
5 Court Reporter for Dane County, State of Wisconsin,  
6 hereby certify that the foregoing is a true, correct and  
7 complete transcript of the TESTIMONY OF ERIC FLEMING in  
8 the foregoing matter, held on the 17th day of April,  
9 2012, as contained in my Stenograph shorthand notes and  
10 all matters pertaining thereto.

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12 Dated this 4th day of June, 2012.

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15 Debra B. Jenson, CMR, CRR  
16 Circuit Reporter, Br. 1  
17 Dane County Circuit Court  
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# Change of Corporate Control

Office Use Only

To be considered at the ALRC meeting of MARCH 16 and Common Council Meeting of 3/29/11  
 License Type \_\_\_\_\_ License # L1CCCC2011-00177 Legistar # 21665  
 Agent ERIC FLEMING 49 % Alcohol 51 % Food Granted/Denied

Name of Corporation/LLC Ophelum of Madison, Inc.  
 DBA Ophelum Theatre  
 State of Incorporation Wisconsin  
 Address of Premise 216 State Street

### Proposed Stockholders (including those already approved by Council):

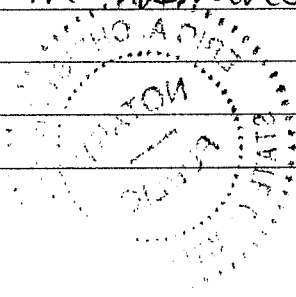
Name	Address	Extent of Interest/Control
<u>Eric Fleming</u>	<u>1542 Wild Iris street</u>	<u>100%</u>
	<u>300 Prairie, WI</u>	
	<u>53590</u>	

### Proposed Officers/Members (including those already approved by Council):

	Name
President/Member	<u>Eric M Fleming</u>
Vice President/Member	<u>"</u>
Secretary/Member	<u>"</u>
Treasurer/Member	<u>"</u>
Other Officers (if none, state "None")	<u>NONE</u>

### Proposed Directors (including those already approved by Council):

Name	Address
<u>Eric M Fleming</u>	<u>1542 Wild Iris street</u>
	<u>300 Prairie, WI</u>
	<u>53590</u>



I certify that the foregoing is a true and correct copy of said document on file in the office of the City Clerk of the City of Madison, Wisconsin.

Dated 06/21/12  
Thomas Lund for  
 City Clerk



About My Tax Account

Home  
Back  
Log Off

View Account  
Attributes

File a Return

Make a Payment

Request Payment Plan

Request Extension to  
File

Appeal Request

**SALES & USE TAX**

Account Id 456-1020059754-03  
Filing Frequency Early Monthly  
Payment Source Setup

Balance 1,280.22  
Pending Payments + Returns 0.00  
Effective Balance Pay 1,280.22

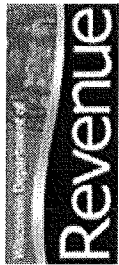
Requests<sup>0</sup> Activity Notices<sup>13</sup> Mail

Attention Needed<sup>3</sup> Search

**PERIODS FROM 18-JUL-2010**

Period	Return Status	File Now	Pay	Tax	Penalty/Fee	Interest	Credits	Balance	Messages	Change Date	Defaults	Filter
31-Jul-2012		File Now	Pay	0.00	0.00	0.00	0.00	0.00	0.00			
30-Jun-2012	Outstanding	File Now	Pay	0.00	0.00	0.00	0.00	0.00	File Return			
31-May-2012	Overdue	File Now	Pay	0.00	0.00	0.00	0.00	0.00	File Return			
30-Apr-2012	Estimated	File Now	Pay	1,000.00	270.00	20.22	10.00	1,280.22	File Return			
31-Mar-2012	Processed	View / Amend	Pay	0.00	0.00	0.00	0.00	0.00				
29-Feb-2012	Processed	View / Amend	Pay	0.00	0.00	0.00	0.00	0.00				
31-Jan-2012	Processed	View / Amend	Pay	0.00	0.00	0.00	0.00	0.00				
31-Dec-2011	Processed	View / Amend	Pay	0.00	0.00	0.00	0.00	0.00				
30-Nov-2011	Processed	View / Amend	Pay	0.00	0.00	0.00	0.00	0.00				
31-Oct-2011	Processed	View / Amend	Pay	0.00	0.00	0.00	0.00	0.00				
30-Sep-2011	Processed	View / Amend	Pay	0.00	0.00	0.00	0.00	0.00				
31-Aug-2011	Processed	View / Amend	Pay	0.00	0.00	0.00	0.00	0.00				
31-Jul-2011	Processed	View / Amend	Pay	982.47	55.00	1.91	1,039.38	0.00				
30-Jun-2011	Processed	View / Amend	Pay	3,467.52	401.75	97.28	3,966.55	0.00				
31-May-2011	Processed	View / Amend	Pay	1,181.93	232.29	58.97	1,473.19	0.00				
30-Apr-2011	Processed	View / Amend	Pay	0.00	0.00	0.00	0.00	0.00				
31-Mar-2011	Processed	View / Amend	Pay	2,416.71	170.26	375.41	2,962.38	0.00				
28-Feb-2011	Processed	View / Amend	Pay	4,189.66	287.83	712.81	5,190.30	0.00				
31-Jan-2011	Processed	View / Amend	Pay	1,276.40	20.00	3.78	1,300.18	0.00				
31-Dec-2010	Processed	View / Amend	Pay	2,692.15	154.61	33.11	2,879.87	0.00				
30-Nov-2010	Processed	View / Amend	Pay	3,686.99	388.70	74.75	4,150.44	0.00				
31-Oct-2010	Processed	View / Amend	Pay	5,267.91	283.40	72.24	5,623.55	0.00				





About My Tax Account

- Home
- Back
- Log Off

- View Account Attributes
- File a Return
- Make a Payment
- Request Payment Plan
- Request Extension to File
- Appeal Request

PERIODS FROM 18-JUL-2010

Period	Status	View / Amend	Pay	5,748.43	307.42	116.23	6,172.08	Change Date	Defaults	Filter
30-Sep-2010	Processed	View / Amend	Pay	5,748.43	307.42	116.23	6,172.08	0.00		
31-Aug-2010	Processed	View / Amend	Pay	4,542.81	0.00	91.85	4,634.66	0.00		
31-Jul-2010	Processed	View / Amend	Pay	5,031.88	333.69	101.74	5,467.31	0.00		

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State of Wisconsin  
Department of Revenue  
2135 Rimrock Rd.  
Madison, WI 53708

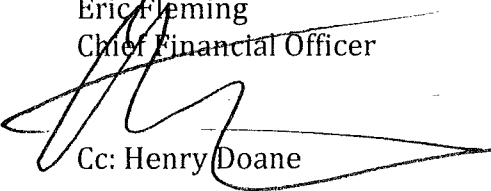
RE: Seller's Permit # 456-1020059754-03

To Whom It May Concern;

I, Eric Fleming, am the only authorized representative of the Orpheum Theatre Company of Madison, Inc. I am granting the release of information regarding our Seller's Permit to the City of Madison Attorney's Office. This is a temporary release and may be withdrawn anytime upon notice from myself on behalf of the Orpheum Theatre Company of Madison, Inc. Thank you for your cooperation.

ORPHEUM THEATRE COMPANY OF MADISON, INC.

Eric Fleming  
Chief Financial Officer

  
Cc: Henry Doane

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STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

KILBOURN MERCHANT CORPORATION,

Plaintiff,

- VS -

FORTY ACRE WOOD, LLC,  
ROBERT WILLIAMS,  
THOMAS LORENZ,  
JOSEPH LORENZ, INC.,  
LORENZ HOLDING COMPANY, and  
ERIC FLEMING,

**ORDER FOR  
APPOINTMENT OF  
RECEIVER**

Case No. 11 TJ 383

Defendants,

STATE STREET RESOURCES LLC,

Assigned Creditor.

F	I	L	E	D
DEC 22 2011				
STATE OF WISCONSIN CIRCUIT COURT FOR DANE COUNTY				

Upon Assigned Creditor's motion for an order appointing a receiver of the property of Eric Fleming, defendant herein,

Defendant was served with an Order to Appear Before Court Commissioner on October 10, 2011. Defendant was served with a Continued Order to Appear Before Court Commissioner on November 2, 2011.

Defendant having appeared at a supplemental examination before Scott Herrick, Court Commissioner for Dane County, Wisconsin on October 28, 2011, November 15, 2011, November 22, 2011, December 5, 2011 and December 9, 2011, and said defendant having been examined and having answered concerning his property, and it appearing from the examination and the answers of the defendant that said defendant has property which is not exempt under Wisconsin law, and it appearing that no other receivership arising out of a supplemental proceeding is pending against said defendant.

Receiver Douglas Mann, has been appointed for Eric Fleming's right and title interest in and to 216 State Street, LLC, State Street Properties II, LLC, and State Street Properties I, LLC and associated real estate, in Waukesha County Case No. 09 CV 4898.

NOW IT IS ORDERED that Douglas Mann be and is appointed supplementary receiver on behalf of the assigned creditor State Street Resources LLC, under Chapter 816 of the Wisconsin Statutes of all property, equitable interests, claims, assets, effects, rights, and things in action of the judgment debtor, not subject to the prior interest of receiver Douglas Mann, sufficient to satisfy the judgment together with post judgment costs, interest and receiver's fees with the usual powers of receivers in such cases. The receiver may sell said property, by public or private proceedings, in any commercially reasonable manner and ~~without further~~ <sup>upon</sup> order of the Court ~~with reasonable~~ <sup>seven days'</sup> notice to Mr. Fleming. *JW*

IT IS FURTHER ORDERED that said defendant Eric Fleming deliver to the receiver within 10 days after service of this order upon the defendant the following:

- A. All of said defendant's property sufficient to satisfy the judgment including post judgment costs, interest, and receiver's fees, which property is not exempt from execution by law;
- B. Complete list of assets under oath;
- C. Titles bills of sales, or other evidence of ownership.

IT IS FURTHER ORDERED that said defendant appear before this court or court commissioner Scott Herrick, or the receiver, from time to time when ordered to do so, and produce such books, papers, and records and submit to such examination under oath as may be directed in relation to any matter which defendant may be legally required to disclose. Pending defendant's compliance with the foregoing, the defendant is hereby enjoined and restrained from making any transfer or other disposition of any property belonging to the defendant not exempt from execution by law, and from interfering in any way with the receiver or the rights of the said receiver in connection with said property.

Dated: December 22, 2011

*John W. Markson*  
Hon. John W. Markson  
Circuit Court Judge

*It is further ordered that Mr. Fleming waives any objection to the Park Inc.'s producing the settlement agreement in Eric Fleming v. David Schwager, et al., Case #09CV4898. The court will maintain the confidentiality of that agreement.*