

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

Omar, LLC)	Case Number:	15-PRO-00101
t/a Castello Restaurant and Lounge)	License Number:	100259
)	Order Number:	2016-088
Application for a New)		
Retailer's Class CT License and)		
Sidewalk Café and Entertainment)		
Endorsements)		
)		
at premises)		
931 Hamilton St., N.W.)		
Washington, D.C.20011)		

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

ALSO PRESENT: Omar, LLC, t/a Castello Restaurant and Lounge, Applicant

Dee Hunter, Director, Capital Business Brokers, on behalf of the Applicant

David Sheon, Commissioner, on behalf of Advisory Neighborhood Commission 4D, and Group of 23, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) grants the Application for a New Retailer's Class CT License and Sidewalk Café and Entertainment Endorsements (Application) filed by Omar, LLC, t/a Castello Restaurant and Lounge (hereinafter "Applicant" or "Castello Restaurant and Lounge"). Nevertheless, based on Advisory Neighborhood Commission (ANC) 4D's and the Group of 23's persuasive arguments, and the Applicant's admission regarding its intended hours of operation, the Board is

convinced that full hours for indoor and outdoor seating is inappropriate for the neighborhood. As such, the Applicant's hours of operation, sale, and service in the interior portion of the restaurant shall be from 10:00 a.m. to 12:00 a.m., Sunday through Saturday. The hours of operation, sale, and service of the Applicant's sidewalk café shall be from 10:00 a.m. to 11:00 p.m., Sunday through Thursday, and 10:00 a.m. to 12:00 a.m., Friday and Saturday. Entertainment shall be limited to the interior of the establishment and shall be from 6:00 p.m. to 12:00 a.m., Sunday through Saturday.

Procedural Background

The Notice of Public Hearing advertising Castello Restaurant and Lounge's Application was posted on September 11, 2015, and informed the public that objections to the Application could be filed on or before October 26, 2016. *ABRA Protest File No. 15-PRO-00101, Notice of Public Hearing [Notice]*. On or before the protest deadline, the Alcoholic Beverage Regulation Administration (ABRA) received a resolution from ANC 4D protesting Castello Restaurant and Lounge's Application in accordance with D.C. Official Code §§ 25-601 and 25-602. *ANC 4D Resolution to Oppose ABRA Application 100259 Castello Restaurant and Lounge (Sept. 16, 2015) [ANC 4D Resolution]*. ABRA also received a petition signed by 23 residents in accordance to D.C. Official Code §§ 25-601 and 25-602, protesting Castello Restaurant and Lounge's Application. *Community Protest Petition Over Proposed Hours of Operation and Potential Noise from Castello Restaurant and Lounge [Group of 23 Protest Petition]*.

The parties came before the Board's Agent for a Roll Call Hearing on November 9, 2015, where ANC 4D and the Group of 23 (hereinafter collectively referred to as "Protestants") were granted standing to protest the Application. *ABRA Protest File No. 15-PRO-00101*. On December 9, 2015, the parties came before the Board for a Protest Status Hearing. *Id.* Finally, the Protest Hearing in this matter occurred on January 16, 2016. *Transcript (Tr.)*, 1.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. *See Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643 (D.C. 1982); D.C. Official Code §§ 1-309.10(d) and 25-609. Accordingly, the Board "must elaborate, with precision, its response to the ANC[s] issues and concerns." *Foggy Bottom Ass'n*, 445 A.2d at 646. The Board notes that ANC 4D submitted its recommendation on September 16, 2015. *ANC 4D Resolution*, 1. The Board addresses ANC 4D's concerns in its Conclusions of Law.

I. Protestant's Request for Recusal for ABC Board Chair Re: Protest Hearing for Applicant 100259 Castello Restaurant and Lounge

On December 16, 2015, the Protestants submitted a letter to ABRA, Office of General Counsel, requesting the recusal of Board Chairman Donovan Anderson. *Request for Recusal for ABC Board Chair Re: Protest Hearing for Applicant 100259 Castello Restaurant and Lounge [Letter Requesting Recusal]*. Protestants raised their request for recusal again at the beginning of the Protest Hearing. *Tr.* at 4-5.¹

¹ Protest Status Hearing Transcript (December 9, 2015), at 6 ("And just to announce for the record, I know Mr. Hunter, who is sitting in front of us, [he] is someone I have known for a number of years. However, the

Protestants argued that the term, “causal relationship” is a broad term that can encompass many different types of relationships. They stated that they requested additional information from ABRA about the Chairman’s relationship with Mr. Hunter, but no information was provided. *Letter Requesting Recusal*, at 1; *Tr.* 5. The Chairman stated that he does not have a relationship with Mr. Hunter outside of knowing who he is. *Tr.* at 7. If they are in the same place, the Chairman would greet him, but that is the extent of his relationship with Mr. Hunter. *Id.* According to Mr. Hunter’s own admission, the last time he spoke with the Chairman was 10 years ago. *Id.* The Chairman did not think his relationship with Mr. Hunter would bias his view of the case. *Protest Status Hearing Transcript* at 6.

As an administrative body, the Board seeks guidance for the disqualification of a Board member from the procedural rules governing the D.C. Office of Administrative Hearings. *Dupont Circle Citizen’s Ass’n v. D.C. Alcoholic Beverage Control Bd.*, 766 A.2d 59, 65 (D.C. 2001)(“[W]e have recognized that the criteria governing recusal of judicial officers apply also to agency decisionmakers acting in an adjudicative or quasi-adjudicative capacity.”). Subsection 2832.1 of Title 1 of the District of Columbia Municipal Regulations governs the recusal of administrative law judges. In pertinent part, 1 DCMR § 2832.1 provides, “[a]n Administrative Law Judge shall recuse himself or herself in accordance with the standards applicable to judges of the Superior Court of the District of Columbia.” 1 DCMR § 2832.1.

Rule 2.11 of the Code of Judicial Conduct governs the disqualification of D.C. Superior Court judges. In pertinent part, Rule 2.11(A) provides:

- (A) A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances:
- (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding;
 - (2) The judge knows that the judge, the judge’s spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:
 - (a) A party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
 - (b) Acting as a lawyer in the proceeding;
 - (c) A person who has more than a *de minimis* interest that could be substantially affected by the proceeding; or
 - (d) Likely to be a material witness in the proceeding;
 - (3) The judge knows that he or she, individually or as a fiduciary, or the judge’s spouse, domestic partner, parent, or child, wherever residing, or any other member of the judge’s family residing in the judge’s household, has an economic interest in the subject matter in controversy to the proceeding;

casual relationship that I have with him I don’t think will, in any way, influence the decision I have to make if the Board has to make a decision. So I just want to let the record reflect that this is someone that I have a casual acquaintance with.”).

- (4) [NOT ADOPTED];
- (5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.
- (6) The judge:
 - (a) Served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;
 - (b) Served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;
 - (c) Was a material witness concerning the matter; or
 - (d) Previously presided as a judge over the matter in another court.

Code of Judicial Conduct Rule 2.11 [*Code of Judicial Conduct*].

After considering the facts presented, the Chairman denied the motion for recusal. *Tr.* at 7. The Chairman's relationship with the Applicant's Representative, Mr. Hunter, does not give rise to recusal under Code of Judicial Conduct Rule 2.11. The Chairman indicated that he knows Mr. Hunter only well enough to say hello to him if they were at the same place. *Id.* The Chairman does not have a professional or a personal relationship which would lead reasonable minds to believe his judgment in the present case would be prejudiced in any way. According to Mr. Hunter's own admission, the last time he spoke with the Chairman was ten years ago. *Id.* Finally, Mr. Sheon, the Protestants' Representative, indicated at the Protest Hearing that he was "fine" with the Chairman's explanation and that the Chair had successfully addressed the community's concerns. *Id.* at 9.

The casual relationship between the Chairman and Mr. Hunter is not one which would give rise to requiring his being recused from the proceedings. Accordingly, the Board affirms herein the Chairman's denial of the Protestants' motion.

II. Protestant's Motion to Disqualify Applicant's Evidence

On January 5, 2016, the Protestants filed a Motion to Disqualify Applicant's Evidence. *ABRA Protest File No. 15-PRO-00101, Motion to Disqualify Applicant's Evidence [Motion to Disqualify]*. In their motion, the Protestants raised two arguments in support of their motion to disqualify the Applicant's evidence. First, the Protestants argued the Zip file the Applicant provided to the Protestants containing its exhibits was locked. *Id.* at 1. Notwithstanding bringing the problem to the Applicant's Representative's attention, the Protestants were not provided with the access code prior to the Protest Hearing. *Id.* Lastly, the Protestants objected to the submission of confidential notes taken from a mediation hearing pertaining to a previous case that the Board dismissed. *Id.*²

² The Board dismissed the Applicant's previous Application for a CT License due to the Applicant's failure to attend the Protest Status Hearing. Board Order No. 2015-354 (July 15, 2015); see also Board Order No. 2015-364 (July 22, 2015)(affirming Board Order No. 2015-354).

The Board concludes that this issue is moot. The only evidence Applicant used during the Protest Hearing was the ABRA Investigator's Protest Report and the exhibits included therein. *Tr.* at 226. The ABRA Investigator's Protest Report, as a matter of course, is made a part of the Applicant's file, regardless of whether a party introduces it into evidence. The Applicant did not introduce any evidence separate and apart from the ABRA Investigator's Protest Report. *Id.* Therefore, the Protestant's Motion to Disqualify the Applicant's evidence is moot.

III. Limitation of Issues

The sole issue in this case is whether Castello Restaurant and Lounge's requested hours of operation, for both the restaurant's dining room and sidewalk café, are appropriate for the neighborhood. As has been stated by the District of Columbia (D.C.) Court of Appeals, "The Board's regulations require findings only on contested issues of fact." *Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998); 23 DCMR § 1718.2.

In its Resolution, ANC 4D stated that it had "great concerns over the proposed hours of ABRA Application 100259, Castello Restaurant and Lounge regarding 'peace, order, and quiet' on the residential street on which the restaurant is located." *4D Resolution*, at 1. The Group of 23's Protest Petition raises similar concerns regarding the Applicant's hours of operation. *Group of 23 Protest Petition*, at 1. As such, this order will only address whether the Applicant's requested hours of operation, including hours of entertainment, will have an adverse impact on the peace, order, and quiet of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b).

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

I. Background

1. Castello Restaurant and Lounge has submitted an Application for a New Retailer's Class CT License with Sidewalk Café and Entertainment Endorsements at 931 Hamilton St., N.W. *Notice* at 1.

II. ABRA Investigator Kofi Apraku

2. ABRA Investigator Kofi Apraku investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 15-PRO-00101*, Protest Report (Dec. 2015) [*Protest Report*].

3. The proposed establishment will be located in a commercial C-2-A zone. *Protest Report*, at 1; *Investigator's Exhibit 3*. Ten licensed establishments are located within 1,200 feet of the establishment's proposed location. *Protest Report* at 2; *Tr.* at 25. Of the ten establishments, one of the establishments, El Camino stays open until 3:00 a.m. *Tr.* at 29.

4. There are no schools or recreation centers located within 400 feet of the proposed location. *Id.* at 3.
5. The establishment's proposed hours of operation for the interior portion of the restaurant are as follows: 10:00 a.m. to 2:00 a.m., Sunday through Thursday, and 10:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.* at 3-4. The establishment's proposed hours of alcoholic beverage sales, service, and consumption in the interior portion of the restaurant are as follows: 10:00 a.m. to 2:00 a.m., Sunday through Thursday, and 10:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.* at 4.
6. Castello Restaurant and Lounge's proposed hours of operations for its sidewalk café are as follows: 10:00 a.m. to 12:00 a.m., Sunday through Thursday, and 10:00 a.m. to 1:00 a.m. on Friday and Saturday. *Id.* The Applicant's hours of alcoholic beverage sales, service, and consumption on the sidewalk café are 10:00 a.m. to 12:00 a.m., Sunday through Thursday, and 10:00 a.m. to 1:00 a.m., on Friday and Saturday. *Notice.*
7. The establishment's proposed entertainment hours are 6:00 p.m. to 12:00 a.m., Sunday through Thursday, and 6:00 p.m. to 1:00 a.m., on Friday and Saturday. *Protest Report*, at 4.
8. ABRA Investigators monitored the proposed location on seven separate occasions between December 12, 2015, and December 23, 2015. *Id.* at 4-5. According to the investigator's observations, the proposed location was undergoing construction. *Id.* at 3.
9. During the ABRA Investigators' monitoring of the proposed location, they did not observe any excessive loitering, criminal activity, or hear any excessive noise from or around Castello Restaurant and Lounge. *Id.* at 5. Investigator Apraku did not observe any violations or indiscretions and only light pedestrian and vehicular traffic. *Id.* Investigator Apraku, however, did note that pedestrian and vehicular traffic increased on Georgia Avenue during rush hour. *Id.*
10. The Investigator noted that the area where Castello Restaurant and Lounge will be located has a mix of residential housing and commercial establishments. *Id.* at 3. There are residences along Georgia Avenue and Hamilton St. *Tr.* at 42 and 76; *Investigator's Exhibit 7.* There is approximately 15 feet between the establishment and the residences along Georgia Ave. *Tr.* at 42.
11. Next to Castello Restaurant and Lounge is the Georgia Line Convenience Store and Iglesia De Dios Church. *Protest Report* at 3. Behind Castello Restaurant and Lounge is a fenced off alley that is shared by other neighboring establishments. *Tr.* at 44. The Investigator noted that the Applicant is planning on placing a dumpster behind the chain link fence. *Id.* at 43.
12. Castello Restaurant and Lounge has only one floor. *Protest Report* at 3. The front entrance to Castello Restaurant and Lounge faces Hamilton Street. *Id.* at 3. Upon entry into the establishment, patrons will be able to sit in booths lining the wall of the main floor. *Id.* The Applicant intends to provide entertainment in the front area of the establishment. *Tr.* at 40. There will also be an L-shaped bar across from the booths. *Id.*; *Tr.* at 40. In the

back of the sitting area will be the kitchen and prep room. *Id.* In addition to the kitchen, there will be an area in the back for larger gatherings. *Id.*

13. Along the side of the establishment on Hamilton Street will be a sidewalk café. *Id.* There will be a covering for the sidewalk café. *Tr.* at 40.

III. Amadou Bah

14. Amadou Bah is the co-owner of Castello Restaurant and Lounge along with his wife. *Tr.* at 78.

15. Mr. Bah plans on running the Castello Restaurant and Lounge like a restaurant; serving breakfast, lunch and dinner. *Id.* at 79. The total capacity for inside of the restaurant is 90 patrons and for the sidewalk café, it is 40 patrons. *Id.* The total length of the restaurant is 120 feet and the length of the sidewalk café (from where the sidewalk café begins to the end of the building) is 59 feet. *Id.* at 81-82. The length of the sidewalk café from the where the sidewalk café begins to the end of the alley (where the residential homes begin) is 73 feet. *Id.* at 83. However, Mr. Bah provided no exhibits or documentation, such as a Department of Consumer and Regulatory Affairs Certificate of Occupancy or architectural drawings to support his testimony regarding occupancy levels, the dimensions of the property's interior and sidewalk café, or the plans for the physical layout of the restaurant's operations.

16. Mr. Bah noted that the restaurant's sidewalk café will be covered on all sides, including a retractable roof. *Id.* at 87; 142; 158-159. Mr. Bah, however, was unable to provide information regarding the type of materials that will be used to create the covering for the sidewalk café. *Id.* at 137-169.

17. Mr. Bah stated that he is planning on having a live jazz band perform at the restaurant on occasion. *Id.* at 84. The entertainment will take place in the front half of the restaurant. *Id.*; and 160. He is not planning on having entertainment on the sidewalk café nor is he planning on having a DJ. *Id.* at 85; 106-107; 131; 137; and 164. However, Mr. Bah provided no architectural drawings to support his representations regarding where entertainment would take place.

18. Mr. Bah testified that he originally sought to operate until 2:00 a.m. on Sunday through Thursday, and 3:00 a.m. on Friday and Saturday because he wants to be able to compete with other similar establishments in the neighborhood. *Id.* at 85. He further stated that he requested the longer hours of operation in the event the area changes and patrons want to stay out longer, he would be authorized to serve them without having to apply for a modification to his license. *Id.* at 124. Based on his current judgment of the area, however, Mr. Bah stated that he would close the restaurant at midnight. *Id.* at 125-126; 132; and 167.

IV. Annie Wallace

19. Ms. Wallace testified on behalf of ANC 4D. *Id.* at 177. Ms. Wallace's home is across the street from Castello Restaurant and Lounge. *Id.* Ms. Wallace testified that she does not object to a family-style restaurant opening in the neighborhood. *Id.* at 185 and 187. Her only objection is to the late hours and music which she believes would cause a

disturbance to the neighborhood. *Id.* at 185. Ms. Wallace stated that unlike the establishments that are opened later, Castello Restaurant and Lounge would be located directly in the neighborhood. *Id.*

20. Ms. Wallace testified that she believed the restaurant should close at 1:00 a.m., it should not play loud music, and the music should end at 12:30 a.m. or 1:00 a.m. *Id.* at 187-188.

V. Karent Abbott

21. Karen Abbott testified on behalf of ANC 4D. *Id.* at 190. Ms. Abbott's residence is the first house next to the alley abutting Castello Restaurant and Lounge. *Id.* Her home is approximately 15 feet away from the establishment. *Id.* at 192.

22. Ms. Abbott testified that she understood that Castello Restaurant and Lounge was going to be a family-style restaurant, which she was happy with. *Id.* at 193. Her main concern is with the hours of operation. *Id.* She stated she believes the restaurant should close at 1:00 a.m. *Id.* at 194.

23. Ms. Abbott stated that she was not opposed to the restaurant having a sidewalk café so long as it is clean and there is no trash. *Id.* at 194-195. With respect to hours, she believes the sidewalk café should close at 10:00 p.m. seven days a week. *Id.* at 204.

VI. Lenny Muse

24. Lenny Muse testified on behalf of ANC 4D. *Id.* at 205. Mr. Muse lives two doors down from Castello Restaurant and Lounge. *Id.* at 206. Mr. Muse testified that the establishment looks like a nightclub because of its black exterior and dim interior lighting. *Id.* at 208.

25. Mr. Muse testified that he believes the neighborhood needs a family-style restaurant, but that his central concern is the restaurant's hours. *Id.* at 213-214; 219; and 221. He believes the restaurant should close at 11:00 p.m. or 12:00 a.m., Monday through Friday, and at 12:30 a.m. or 1:00 a.m., Saturday and Sunday. *Id.* at 215. In regards to the sidewalk café, he believes it should close at 12:00 a.m. *Id.* at 221-222.

26. Mr. Muse testified that he is not opposed to the establishment having light music, but not every day. *Id.* at 223.

CONCLUSIONS OF LAW

27. The Board may approve a request for a New Retailer's Class CT License when the proposed establishment will not have an adverse impact on area located within 1,200 feet of the establishment. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b). The only question before the Board is whether the Applicant's proposed hours of operation will have an adverse impact on the peace, order, and quiet of the area located within 1,200 feet of the establishment.

I. THE PROXIMITY OF RESIDENTS WARRANTS RESTRICTIONS ON THE APPLICANT'S HOURS OF OPERATION AND HOURS OF ENTERTAINMENT.

28. The Board finds that the Application is appropriate subject to the condition that the Applicant's hours of operation, sale, and service in the interior portion of the restaurant shall be from 10:00 a.m. to 12:00 a.m., Sunday through Friday. The hours of operation, sale, and service on the sidewalk café shall be from 10:00 a.m. to 11:00 p.m., Sunday through Thursday, and 10:00 a.m. to 12:00 a.m. on Friday and Saturday. The hours of entertainment shall be from 6:00 p.m. to 12:00 a.m., and limited to the interior of the restaurant.

29. Under D.C. Official Code § 25-104(e):

The Board, in issuing licenses, may require that certain conditions be met if it determines that the inclusion of the conditions will be in the best interest of the locality, section, or portion of the District where the licensed establishment is to be located. The Board, in setting the conditions, shall state, in writing, the rationale for the determination.

D.C. Official Code § 25-104(e).

30. Under D.C. Official Code § 25-313, the Board must consider all evidence of record, including, but not limited to, "[t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726." D.C. Official Code § 25-313(b)(2). Section 25-725 of Title 25 of the D.C. Official Code states, "[t]he licensee under an on-premises retailer's license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises [located in a residential zone] other than the licensed establishment by the use of any: . . . Mechanical device" D.C. Official Code § 25-725(a), (a)(1), (b), (b)(3). Further, D.C. Official Code § 25-313(b)(2) permits the Board to consider noise beyond the scope of D.C. Official Code § 25-725. *Panutat, LLC, t/a District of Columbia Alcoholic Beverage Control Bd.*, 75 A.3d 269, 267-77 n. 12 (D.C. 2013) ("However, in mandating consideration of the effect on peace, order, and quiet, § 25-313(b)(2) does not limit the Board's consideration to the types of noises described in § 25-725.").

31. In support of its argument in favor of remaining open until 2:00 a.m. Sunday through Thursday, and 3:00 a.m. on Friday and Saturday, the Applicant points to the operations of other establishments in the area. *Id.* at 85. Mr. Bah, the owner, testified that he requested the longer hours because he wanted to be able to compete with other establishments in the area. *Id.* at Mr. Bah also applied for the longer hours in the event the neighborhood changed to one where patrons stayed out longer that way he would not have to apply for a substantial change for longer hours. *Id.* at 124.

32. Notwithstanding his requesting longer hours, Mr. Bah admitted that even if the Board were to grant the extended hours, he would likely close the restaurant at midnight. *Id.* at 125-126; 132; and 167.

33. ANC 4D's presentation, in conjunction with Mr. Bah's admission, convinces the Board that Castello Restaurant and Lounge dining room should close at midnight, seven days a week, and that the sidewalk café should close at 11:00 p.m., Sunday through Thursday, and midnight on Friday and Saturday, and that the restaurant's entertainment shall be from 6:00 p.m. to 12:00 a.m., Sunday through Saturday, and in the interior of the restaurant only.

34. First, ANC 4D has shown that the residents who live near the establishment support the restaurant being in the neighborhood, and that they do not oppose the inclusion of a sidewalk café and entertainment. *Id.* at 185 and 187; 193; 213-214; 219; and 221. The only thing the residents oppose are the longer hours; contending the longer hours would have an adverse impact on the peace and quiet of the neighborhood. *Id.*; *ANC 4D Resolution*; and *Group of 23 Protest*. Ms. Abbott lives 15 feet from the establishment. *Id.* at 192. There is only a small alley between the back of Castello Restaurant and Lounge, and Ms. Abbott's home. *Id.* The kitchen and prep room for the restaurant are located in the rear. *Id.* at 40; and 84. The likelihood that noise from the kitchen will be heard by residents like Ms. Abbott is great.

35. Second, ANC 4D was able to demonstrate that other establishments which are open to 2:00 a.m. and 3:00 a.m., such as El Camino, are located further away from the residents. *Id.* Hence, remaining open later does not cause as much of a disturbance to the residence's peace and quiet as Castello Restaurant and Lounge would where it abuts residences on both Hamilton Street and Georgia Avenue. *Id.* at 185.

36. Mr. Bah testified that the sidewalk café will be covered with a retractable roof, but questions remain as to the type of materials which will be used to create the covering. *Id.* at 87; 142; 158-159. Additionally, there was not any evidence presented regarding the use of sound proofing technology. In light of this lack of information with respect to sound suppression, the proximity of the establishment to the residence on Hamilton Street and Georgia Avenue, the Board does not believe it would be appropriate for the establishment to remain open after midnight, seven days a week, or to operate the sidewalk café past 11:00 p.m., Sunday through Thursday, and midnight on Friday and Saturday, or to provide entertainment after midnight, Sunday through Saturday.

37. Based on these conclusions, the Board finds that a proper balance between Castello Restaurant and Lounge's needs and the reasonable expectations of neighbors requires the establishment's hours of operation, sale, and service for: (1) the interior of the restaurant end at midnight, Sunday through Saturday; (2) the sidewalk café end at 11:00 p.m. Sunday through Thursday, and at 12:00 a.m., on Friday and Saturday; and (3) entertainment, which shall be limited to the interior of the restaurant, end at 12:00 a.m., Sunday through Saturday.

II. THE APPLICATION SATISFIES ALL REMAINING REQUIREMENTS IMPOSED BY TITLE 25.

38. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants in their initial protest. *See Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact."); 23 DCMR §

1718.2 (West Supp. 2014). Accordingly, based on the Board's review of the Application and the record, the Applicant has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

ORDER

Therefore, the Board, on this 24th day of February 2016, hereby **GRANTS** Application for a New Retailer's Class CT License and Sidewalk Café and Entertainment Endorsements filed by Omar LLC, t/a Castello Restaurant and Lounge, , subject to the following conditions:

- (1) The Applicant's hours of operation, sale, and service for the interior portion of the restaurant shall be from 10:00 a.m. to 12:00 a.m., Sunday through Saturday;
- (2) The Applicant's hours of operation, sale, and service on the sidewalk café shall be from 10:00 a.m. to 11:00 p.m., Sunday through Thursday, and 10:00 a.m. to 12:00 a.m., Friday and Saturday; and
- (3) The hours of entertainment, which shall be limited to the interior of the restaurant, shall be from 6:00 p.m. to 12:00 a.m., Sunday through Saturday.

IT IS FURTHER ORDERED that the Protestants' Motion to Recuse the Chairman is DENIED.

IT IS FURTHER ORDERED that the Protestants' Motion to Disqualify the Applicant's Evidence is rendered MOOT.

The ABRA shall distribute copies of this Order to the Applicant, ANC 4D, and the Group of 23.

District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



Nick Alberti, Member



Ruthanne Miller, Member



Mike Silverstein, Member



James Short, Member

Under 23 DCMR § 1719.1 (2008), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, under section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration under 23 DCMR § 1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).