THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
Don Juan Restaurant, Inc.	)	
t/a Don Juan Restaurant & Carryout	)	
	)	
Petition to	)	
Terminate a Voluntary Agreement	)	License No. ABRA-015934
for a Retailer's Class CR License	)	Order No. 2011-387
	)	
at premises	)	
1660 Lamont Street, N.W.	)	
Washington, D.C. 20010	)	
	)	

Don Juan Restaurant, Inc., t/a Don Juan Restaurant & Carryout (Petitioner)

Rick Massumi, Esq., on behalf of the Petitioner

Claudia Schlosberg, on behalf of A Group of Mount Pleasant Residents (Hear Mt. Pleasant)

BEFORE: Nick Alberti, Interim Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ORDER TERMINATING VOLUNTARY AGREEMENT BETWEEN DON JUAN RESTAURANT, INC., AND HEAR MT. PLEASANT

The official records of the Alcoholic Beverage Control Board (Board) reflect that Don Juan Restaurant, Inc., t/a Don Juan Restaurant & Carryout (Petitioner), filed a Petition to Terminate a Voluntary Agreement (Petition), dated August 25, 2011. In a 5-0 vote, the Board unanimously voted to approve the Petition on September 14, 2011.

The Petitioner entered into a Voluntary Agreement, dated July 1, 2008, with A Group of Mount Pleasant Residents (Hear Mt. Pleasant) and approved via Board Order No. 2008-233. The Petitioner and Claudia Schlosberg, on behalf of Hear Mt. Pleasant, now seek to terminate under D.C. Official Code § 25-446(d)(4) (2004). See ABRA Licensing File No. 015934.

Section 446(d)(1) states that "Unless a shorter term is agreed upon by the parties, a voluntary agreement shall run for the term of a license, including renewal periods, unless it is terminated or amended in writing by the parties and the termination or amendment is approved by the Board." § 25-446(d)(1).

In a letter, dated August 25, 2011, the parties submitted a letter requesting that the Board terminate the Voluntary Agreement entered into with Hear Mt. Pleasant. See *Letter from Claudia Schlosberg and Rick Massumi, Esq., to ABRA Director Fred Moosally* (Aug. 25, 2011). In support of their Petition, the parties note that the establishment's ownership are "active members" of the community and that the Petitioner does not adversely impact the peace, order, and quiet of the neighborhood. Id.

We approve the Petition for the above mentioned reasons and also based on our prior Order, which terminated the Mount Pleasant Neighborhood Alliance Voluntary Agreement (MPNA). As we stated previously, § 25-725 provides sufficient protection to the establishment's residential neighbors, because § 25-725 provides a remedy to residential neighbors if noise from the establishment is heard inside their homes. D.C. Code § 25-725; Jaime T. Carrillo, t/a Don Jaime, Board Order No. 2011-143, 15 (D.C.A.B.C.B. Feb. 23, 2011). Furthermore, as we found in our prior Order, terminating the Hear Mt. Pleasant Voluntary Agreement will not impact residential parking and vehicular and pedestrian safety in Mt. Pleasant, because the establishment's hours of operations will not be altered by the Petition and the establishment only has an occupancy of approximately 50 people. Id. Finally, as we previously noted, other ABC establishments that are not subject to the same conditions imposed upon the Petitioner have not had a detrimental impact on the peace, order, and quiet of the neighborhood. Id. at para. 78.

In addition, we note that provisions 16, 17, 18, and 19 of the Hear Mt. Pleasant Voluntary Agreement are superfluous. See id. at para. 64. Provision 16, which prohibits the establishment from selling alcohol to intoxicated patrons, is unnecessary, because D.C. Official Code § 25-781 already prohibits the sale of alcohol to intoxicated individuals. Id. at para. 47. Provision 17, which requires that the establishment's staff be properly trained, in accordance with the law, merely repeats the law and is superfluous. Id. at para. 49. Finally, provisions 18 and 19, which require the establishment to keep the alley and the sidewalk near the establishment clean, are unnecessary, because D.C. Official Code § 25-726 already requires that establishments take "reasonable measures" to ensure that the area outside of the establishment, including "alleys" and "sidewalks," are "free of litter." Id. at para. 40-41; D.C. Code § 25-726 (2001).

Therefore, based on the foregoing reasons, the Board terminates the Voluntary Agreement without conditions. See D.C. 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.").

ORDER

The Board does hereby, this 5th day of October 2011, **TERMINATE** the Hear Mt. Pleasant Voluntary Agreement. A copy of this Order shall be sent to the Petitioner and Claudia Schlosberg, on behalf of Hear Mt. Pleasant.

District of Columbia
Alcoholic Beverage Control Board

Nick Alberti, Interim Chairperson

Donald Brooks, Member

Herman Jones, Member

Calvin Nophlin, Member

Mike Silverstein, Member

Pursuant to 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, pursuant to 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 pursuant to 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).