

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

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|---------------------------------------|------------------------|
| Georgetown Restaurant Partners, LLC) | Case Number: N/A |
| t/a TBD) | License Number: 095188 |
|) | Order Number: 2014-217 |
|) | |
| Application for a New) | |
| Retailer's Class CR License,) | |
|) | |
| at premises) | |
| 3150 M Street, N.W.) | |
| Washington, D.C. 20007) | |
|) | |

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Georgetown Restaurant Partners, LLC, t/a TBD, Applicant

Lyle M. Blanchard, of Greenstein, DeLorme & Luchs, on behalf of
the Applicant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING APPLICATION

Introduction

On May 1, 2014, the Alcoholic Beverage Control Board (Board) voted to deny the Application for a New Retailer's Class CR License (Application) filed by Georgetown Restaurant Partners, LLC, t/a TBD (Applicant) at premises 3150 M Street, N.W. The following order represents the Board's findings of fact and conclusions of law in this matter.

FINDINGS OF FACT

1. The Applicant filed its Application on April 10, 2014. The premises are located in the Georgetown Moratorium Zone, which sets limits on the number of on-premise licenses that may be issued in the zone. 23 DCMR § 305. Recently, on April 10, 2014, three Retailer's Class CR Licenses became available in the Georgetown Moratorium Zone.¹ Licensees were instructed by ABRA that "[c]ompleted applications for the licenses will be reviewed on a first-come, first served basis and are subject to the consideration of the Alcoholic Beverage Control Board."²

2. The Applicant was the fifth individual or entity to file an application for the three available licenses. The Application describes the proposed establishment as a "[t]op quality family restaurant featuring sandwiches, soups, salads, pastas, and desserts." *ABRA Licensing File No. 095188*, ABC Application, Question 15. The 100 percent owner of the establishment is identified in the Application as Marc Weller. *Id.* at Question 18. In Question 5, the Applicant further affirmed that Mr. Weller, acting through the LLC, would be the "true and actual owner of the business." *Id.* at Question 5.

3. The Application was submitted along with an Application for Safekeeping. The Application for Safekeeping states, "Landlord's entity, Georgetown Restaurant Partners, LLC, to hold license in safekeeping until new tenant/operator is found for this location." *ABRA Licensing File No. 095188*, Application for Safekeeping. This application was sworn and notarized by the Applicant on April 9, 2014. *Id.*

CONCLUSIONS OF LAW

4. On its face, the Application demonstrates that the Applicant has no intention of operating a restaurant and is attempting to obtain a license on behalf of an unknown and unnamed third party.

5. Section 25-402(a)(8) states that the application shall contain "[d]ocuments or other written statements or evidence establishing to the satisfaction of the Board that the person applying for the license meets all of the qualifications set forth in § 25-301. . . . D.C. Official Code § 25-402(a)(8). Section 25-301(a)(5) requires all applicants to demonstrate that ". . . the applicant is the true and actual owner of the establishment for which the license is sought, and he or she intends to carry on the business for himself or herself and not as the agent of any other individual, partnership, association, limited liability company, or corporation not identified in the application." D.C. Official Code § 25-301(a)(5).

6. In the Application for Safekeeping, which constitutes a sworn affidavit, the Applicant has essentially affirmed that he never intends to open for business and seeks to transfer the license to a new owner. *Supra*, at ¶ 2. Under these circumstances, the Applicant cannot demonstrate compliance with § 25-301(a)(5), because he does not intend to carry on the business for himself, and merely seeks to transfer the license to an unknown and unidentified third party.

¹ Alcoholic Beverage Regulation Administration, "Four ABC Licenses Coming Available in Georgetown" (Mar. 27, 2014) available at <http://abra.dc.gov/release/four-abc-licenses-coming-available-georgetown>.

² *Id.*

7. Separate and apart from the above, the Board further deems the Application incomplete, because it contains factual discrepancies. Section 25-402(a)(8) states that the application shall also contain “[d]ocuments or other written statements or evidence establishing to the satisfaction of the Board that the person applying for the license meets all of the qualifications set forth in § 25-301. . . .” D.C. Official Code § 25-402(a)(8). Under § 500.1, “[t]he Board shall not accept as filed, and shall take no action upon, any application that is not complete.” 23 DCMR § 500.1 (West Supp. 2013). In his application, the Applicant affirmed that he intended to be the true and actual owner of the business and intends to operate a family restaurant; yet, the Application for Safekeeping demonstrates that he has no intention of doing so. Supra, at ¶¶ 2-3. Based on these factual discrepancies, the Board cannot accept the application as filed, and must deem the application incomplete under § 500.1.

ORDER

Therefore, the Board, on this 14th day of May 2014, hereby **DENIES** the Application for a New Retailer’s Class CR License filed by Georgetown Restaurant Partners, LLC, t/a TBD.

IT IS FURTHER ORDERED that the Application shall be deemed **INCOMPLETE** under 23 DCMR § 500.1. If the Applicant chooses to file a complete amended application that complies with Title 25 of the D.C. Official Code, it shall be treated by ABRA as the last filed application for a license in the Georgetown Moratorium Zone.

The ABRA shall distribute copies of this Order to the Applicant.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



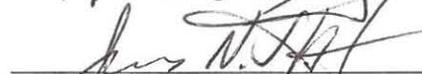
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, 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).