

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

In the Matter of:)		
)	Case No.:	14-PRO-096986
Anyado Hospitality Group, LLC)	License No:	096986
t/a Hush Restaurant & Lounge)	Order No:	2015-277
)		
Application for a New)		
Retailer's Class CT License)		
)		
at premises)		
3124 Georgia Ave., N.W.)		
Washington, D.C. 20010)		

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

ALSO PRESENT: Anyado Hospitality Group, LLC, t/a Hush Restaurant & Lounge,
Applicant

Andrew Kline, Counsel, of the Veritas Law Firm, on behalf of the
Applicant

Commissioner Rashida Brown, on behalf of Advisory Neighborhood
Commission (ANC) 1A and a Group of Twelve Residents and Property
Owners, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) hereby denies the Application for a New Retailer's Class CT License filed by Anyado Hospitality Group, LLC, t/a Hush Restaurant & Lounge, (hereinafter "Applicant" or "Hush") for the following reasons: First, Mr. Nwaeze is unfit for licensure under District of Columbia (D.C.) Official Code § 25-301, because, as the owner of Taste, he illegally transferred the license to a new owner in violation of §§ 25-301(a)(5) and 25-405, and filed a false renewal application in violation of § 25-401(c). Second, the Board finds the Application inappropriate under D.C. Official Code § 25-313, because Mr. Nwaeze's actions as the owner of Taste demonstrate that he cannot properly superintend a licensed establishment. Therefore, the Application is denied.

Procedural Background

The Notice of Public Hearing advertising Hush's Application was posted on November 14, 2014, and informed the public that objections to the Application could be filed on or before December 29, 2014. *ABRA Protest File No. 14-PRO-096986*, Notice of Public Hearing [*Notice of Public Hearing*]. The Alcoholic Beverage Regulation Administration (ABRA) received protest letters from Advisory Neighborhood Commission 1A and a Group of Five or More Residents and Property Owners (hereinafter collectively the "Protestants"). *ABRA Protest File No. 14-PRO-096986*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on January 12, 2015, where all of the above-mentioned objectors were granted standing to protest the Application. On February 11, 2015, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on March 25, 2015.

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, 646 (D.C. 1982); D.C. Code §§ 1-309.10(d); 25-609 (West Supp. 2014). 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 it received a properly adopted written recommendation from ANC 1A. The Board notes that its Conclusions of Law, describing its basis for denying the Application, adequately address the issues and concerns raised by ANC 1A.

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. Hush Restaurant & Lounge has submitted an Application for a New Retailer's Class CT License at 3124 Georgia Ave., N.W., Washington, D.C. *Notice of Public Hearing*.¹

II. Taste International, Inc.

2. The owner, Christopher Nwaeze, previously owned and operated Taste International Inc., t/a Taste, (Taste) at 1812 Hamlin Street, N.E., ABRA License No. 086011. *ABRA Licensing File No. 086011*, Notice of Public Hearing (Posted Nov. 26, 2010), ABRA Application (Received Nov. 11, 2010). Mr. Nwaeze opened Taste in December 2010. *Transcript (Tr.)*, March 25, 2015, at 109, 143, 338-39.

3. The pertinent portions of Taste's investigative history shows the following:

6. 5/31/13: Case# 13-CMP-00272, Hours of sale and service for on-premise retail licensees and temporary licensees; Settlement agreements. 7/24/13: The Board referred to the staff for settlement. 9/20/13: \$2,000 fine paid.

8. 2/23/13: Case #13-CMP-00136, Noise violation, Citation #8273, \$500 fine. (*Secondary*) 4/25/13: Citation paid.

9. 2/18/13: Case #13-CMP-00094, Hours of sale and delivery for on-premises retail licensees and temporary licensees. 3/20/13: The Board requested a Show Cause Hearing. 6/19/13: The Board accepted an OIC of a \$1,250 fine payable within 30 days. 7/26/13: Fine paid.

10. 2/3/13: Case #13-CMP-00110, Noise violation, Citation #7480, \$250 fine. (*Secondary*) 2/20/13: Citation paid.

11. 12/23/12: Case #13-CMP-00072, Noise violation, Citation #7325, \$250 fine. (*Secondary*) 2/20/13: Citation paid

Protestant's Exhibit No. 2 (ABRA Investigative History, ABRA License No. 086011 (Apr. 27, 2015) (Taste)) (See numbers 6, 8-11).

4. Mr. Nwaeze sold Taste on August 2, 2012, to a new owner, TMI International, Inc.. *Tr.*, 3/25/15 at 109-12, 143, 213, 290-91, 294-95; *Applicant's Exhibit Nos. 1-2*. After the sale, Mr. Nwaeze had no involvement in the management or operation of the business. *Tr.*, 3/25/15 at 112-13, 257-58, 292-93, 296. He received full payment for Taste by August 13, 2012. *Id.* at 297. Mr. Nwaeze admitted that Taste's liquor license was not officially transferred in 2012; instead, the license was formally transferred in 2014. *Id.* at 143; *Protestant's Exhibit No. 1 (Taste Transfer Application)*.

¹ At the beginning of the hearing, Hush stipulated that the maximum occupancy of the interior of the premises would be 175 people with 100 seats. *Transcript (Tr.)*, March 25, 2015 at 23. Hush further stipulated that the establishment's outdoor seating area would have a maximum seating occupancy of 44 people. *Id.* at 24.

5. The Applicant provided the “Agreement of Sale” related to the transfer of Taste. *Applicant’s Exhibit No. 1* (Agreement of Sale). The agreement requires that the “Buyer must initiate the transfer of the liquor license to TMI INC. within 60 days of settlement date.” *Id.* at ¶ 3 (page 2). Mr. Nwaeze admitted that the transfer contemplated by this section never occurred. *Tr.*, 3/25/15 at 220, 257. Furthermore, he admitted that he knew the transfer had not occurred, because he repeatedly urged them to complete the transfer. *Id.* at 223-24.

6. The “Agreement of Sale” also stated that “[t]his Agreement is contingent upon the Parties entering into an Interim Concessionaire Agreement allowing Buyer to assume operation and control of the business.” *Id.* at ¶ 5(a) (page 2). The Interim Concessionaire Agreement—if it exists—was not offered into evidence.

7. In 2013, because Taste’s liquor license was still in Mr. Nwaeze’s name, Mr. Nwaeze executed Taste’s renewal application, even though he had no involvement in the operations of the establishment. *Tr.*, 3/25/15 at 259-60, 281.

8. The Board also takes administrative notice of Tastes’ Renewal Application filed in 2013. *ABRA Licensing File No. 086011*, Renewal Application (Taste) (Date Accepted: 10-1-13); 23 DCMR § 1717.1(b) (West Supp. 2015). The first part of Question 12 of the Renewal Application asks the following: “Has the ownership changed since the last renewal?” *Id.* (Question 12). Mr. Nwaeze wrote “No.” *Id.* The second part of Question 12 then asked, “If yes, did the ABC Board approve?” *Id.* Mr. Nwaeze left this answer blank. *Id.* Question 14 asks the applicant to “[l]ist the name and title of each Sole Proprietor, Partner, General Partner, Corporate Officer or Managing Member who has an ownership interest of 10% or greater.” *Id.* (Question 14). In response, Mr. Nwaeze wrote: “Christopher Nwaeze – President.” *Id.*

9. Question 16 of the renewal application, requires the applicant to certify the following: “I hereby certify under penalty of perjury that the information in this renewal application is true and correct. I also certify that the above named applicant is the true and actual owner of the business” *Id.* (Question 16). This certification was signed by “Christopher Nwaeze” and notarized on September 24, 2013. *Id.*

CONCLUSIONS OF LAW

10. The Board denies the Application for two reasons. First, while owning Taste, Mr. Nwaeze illegally transferred his license to a new owner and filed a false renewal application in violation of law, which renders him unfit for licensure under § 25-301(a)(1). Second, the Application is inappropriate, because the illegal transfer demonstrates that he cannot properly superintend a licensed establishment, which indicates that he lacks the ability to ensure that Hush does not have a detrimental impact on the community.

I. THE APPLICANT IS UNFIT FOR LICENSURE BASED ON VIOLATIONS OF 25-301(a)(5), 25-401(c), and 25-405 WHILE OWNING TASTE.

11. The Board finds Mr. Nwaeze unfit for licensure under § 25-301, because, as the owner of Taste, he illegally transferred the license to a new owner and filed a false renewal application in violation of § 25-301(a)(5), 25-401(c), and 25-405.

12. Under § 25-301(a)(1), “[b]efore the Board may issue a license, it must determine that . . . [t]he applicant is of good character and generally fit for the responsibilities of licensure.” D.C. Official Code § 25-301(a)(1). The applicant bears the burden of showing it qualifies for licensure under § 25-301(a)(1) through substantial evidence. *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 288 A.2d 666, 666-69, 671 (D.C. 1972); 23 DCMR § 1718.3 (West Supp. 2014). Furthermore, “[t]his obligation is not dependent upon whether or not anyone makes a character challenge” *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998). Indeed, the Board has an obligation to satisfy itself “. . . that all statutory requirements have been met.” *Id.*

13. In evaluating character and fitness for licensure, the Board “must . . . evaluate each applicant individually, on a case-by-case basis” because “the character of the applicant . . . will necessarily differ from one application to the next” *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1195 (D.C. 1985). At the very least, in order to satisfy the requirements of § 25-301(a)(1), the Board must examine “records, covering the last 10 years from the date of application, maintained by ABRA regarding prior violations of the District's alcohol laws and regulations by the applicant or establishments owned or controlled by the applicant.” D.C. Official Code § 25-301(a-1). The term “[a]pplicant” as it appears in Title 25 of the D.C. Official Code “means, as the context requires, the individual applicant, each member of an applicant partnership or limited liability company, or each of the principal officers, directors, and shareholders of an applicant corporation, or, if other than an individual, the applicant entity.” D.C. Official Code § 25-101(6).

14. In performing the character and fitness review, the Board may weigh illegal conduct when considering fitness for licensure. *Minkoff v. Payne*, 210 F.2d 689, 690-91 (D.C. Cir. 1953); *Haight v. District of Columbia Alcoholic Beverage Control Bd.*, 439 A.2d 487, 489, 493 (D.C. 1981) (upholding the Board’s determination that illegal activity is relevant evidence of character and fitness).

a. The Applicant violated 25-301(a)(5) by allowing a third party to own and control Taste.

15. The Board finds Mr. Nwaeze unfit for licensure, because he engaged in actions that disqualified him from holding Taste’s license by allowing TMI International, Inc., own and control the license without approval in violation of § 25-301(a)(5).

16. Under § 25-301(a)(5), “[b]efore . . . transferring to a new owner . . . the Board shall determine 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 [or entity] . . . not identified in the application. D.C. Official Code § 25-301(a)(5).

17. In this case, Mr. Nwaeze testified under oath that he sold and completely transferred Taste in August 2012 and had no involvement in the business after the sale. *Supra*, at ¶ 4. Between August 2012 and the transfer in 2014, he permitted TMI International, Inc., to operate and manage the establishment without the approval of the Board. *Supra*, at ¶ 5. After the sale, the parties were obligated by law to either place the license in safekeeping, because the business discontinued, or obtained a temporary operating retail permit to allow the new owners to operate under Mr. Nwaeze's license while the transfer was pending. D.C. Official Code § 25-791, 23 DCMR § 703.1 (West Supp. 2015).

18. Instead, Mr. Nwaeze engaged in actions that disqualified him from licensure under § 25-301(a)(5). Specifically, the action of selling the business resulted in him losing his status as the "true and actual owner of the establishment." § 25-301(a)(5). He then permitted TMI International, Inc.—a separate unlicensed and unapproved entity—"to carry on the business" in Mr. Nwaeze's name for its own benefit. *Id.* Therefore, the Board finds that Mr. Nwaeze is unfit for licensure, because he engaged in actions that legally disqualified him from holding Taste's license while he controlled the license.

b. The Applicant filed a false renewal application in violation of 25-401(a).

19. In this case, the Applicant also violated 25-405 by filing false answers to Question 12, Question 14, and Question 16 in Taste's 2013 renewal application, which renders him unfit for licensure.

20. Under § 25-401(c), "[a]ny person who knowingly makes a false statement on an application, or in any accompanying statement under oath that the Mayor or the Board may require, shall be guilty of the offense of making false statements." D.C. Official Code § 25-401(c).

21. The Board can only conclude that Mr. Nwaeze filed a false and misleading renewal application for Taste in violation of § 25-401(c). Mr. Nwaeze completely transferred and sold Taste in August 2012 to new owners and had nothing to do with its operations after August 2012. *Supra*, at ¶ 4. Yet, in 2013, he averred in Taste's notarized renewal application that he was the "true and actual owner" in Question 16 of the renewal application. *Supra*, at ¶ 9. In the same application, he indicated that the ownership of Taste had not changed and did not disclose the new owners of the establishment in either Question 12 or Question 14 of the renewal application. *Supra*, at ¶ 8. Therefore, in light of this act of moral turpitude, Mr. Nwaeze is unfit for licensure.

c. The Applicant failed to comply with § 25-405 by transferring Taste without the approval of the Board.

22. Finally, the Board finds Hush and Mr. Nwaeze unfit for licensure based on Mr. Nwaeze's failure to transfer Taste's license in accordance with D.C. Official Code § 25-405.

23. Section § 25-405(a) requires the filing of a transfer application whenever fifty percent or more of an establishment or the entity controlling the license is transferred. D.C. Official Code § 25-405(a). Under § 25-405(b), "[a]n application to transfer a license to a new owner shall be

filed by the transferee and approved by the Board before the consummation of the transfer.”
D.C. Official Code §25-405(b).

24. In this case, Mr. Nwaeze sold and completely transferred the business in August 2012 to new owners. *Supra*, at ¶ 4. He also took no part in the management or operation of the business after the sale. *Id.* The Board did not approve the transfer application until 2014. *Id.* Under these facts, it is clear that Mr. Nwaeze and TMI International, Inc., consummated the transfer of Taste before obtaining the approval of the Board in violation of § 25-405.

25. The Board is not persuaded by Hush’s argument that § 25-405(b) only applies to transferees. *Tr.*, 3/25/15 at 472. While § 25-405(b) requires the transferee to file the application, part (b) further requires that both parties refrain from consummating the transfer until the application is approved by the Board. § 25-405. As a result, the transferor may still be held responsible for any actions they take that violate the statute.

26. It should be noted that this is not an unreasonable requirement. First, the transfer of a license does not happen in secret; instead, Board approval of a transfer application is a public act that may easily be confirmed by both the transferee and the transferor, because all application approvals are subject to the open meeting requirement and are made available in the Board’s published agenda results. *See* D.C. Official Code § 25-204.01(c)(4). Second, permitting the transferor to have no responsibility under § 25-405(b) is bad public policy, because it opens the door to fraudulent sales of licensed establishments and puts purchasers at financial risk if their transfer application is denied. Third, placing the burden solely on the buyer encourages sellers to engage in illegal transfers, as occurred in this case.²

27. The Board further emphasizes that as a matter of policy, the Board does not view this type of violation as *de minimis* or excusable. When a licensee or applicant engages in the illegal transfer of a license it undermines the public’s interest in having only people of good character holding liquor licenses, as well as the public’s interest in knowing who is trafficking alcoholic beverages. 1 Legislative History of the District of Columbia Beverage Control Act P.L. 73-85 263 1934, 270 (Jan. 9, 1934) (saying the law “provides for a meticulous examination of the character of the manager . . . as well as the owner or applicant” and, that “. . . if anyone, in the estimation of the liquor board, is not of proper character . . . no license will be issued.”); 1 Legislative History of the District of Columbia Beverage Control Act, at 276 (Rep. Black describing the policy of the repeal of prohibition as making the traffic in liquor “. . . legal and licensed, so that everybody in the community could know who was in the traffic, [and] what their characters were”) Indeed, such a violation demonstrates that the applicant lacks sufficient knowledge and familiarity with the alcoholic beverage control laws to properly superintend a licensed establishment. *In re Shaw’s Tavern, LLC t/a Shaw’s Tavern*, Case No. 11-CMP-00314, Board Order No. 2012-018, 5 (D.C.A.B.C.B. Jan. 25, 2012) *citing* *Gerber v. District of Columbia Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1194-1196 (D.C. 1985).

² The Board emphasizes that it would reach the same result, even if the Board agreed with Hush’s interpretation. Specifically, even if Hush is correct, the Applicant, at the very least, knowingly permitted and allowed a third party to violate § 25-405(b), which is sufficient evidence to make a negative finding regarding character and fitness under § 25-301(a)(1).

28. For these reasons, the Board deems Mr. Nwaeze unfit for licensure pursuant to § 25-301; therefore, Mr. Nwaeze and Hush are legally disqualified from licensure.

II. THE BOARD CANNOT MAKE A FINDING OF APPROPRIATENESS BASED ON MR. NWAEZE'S ILLEGAL TRANSFER OF TASTE.

29. The Board finds Hush inappropriate under § 25-313, because Mr. Nwaeze's illegal transfer of Taste demonstrates that he cannot properly superintend or manage a licensed establishment in the District of Columbia.

30. The Board may approve an Application for a New Retailer's Class CT License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2015). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values 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) (West Supp. 2015). Furthermore, “. . . the Board shall consider whether the proximity of [a tavern or nightclub] establishment to a residence district, as identified in the zoning regulations of the District and shown in the official atlases of the Zoning Commission for the District, would generate a substantial adverse impact on the residents of the District.” D.C. Official Code § 25-314(c).

31. Under the appropriateness test, “. . . the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located . . .” D.C. Official Code § 25-311(a). The Board shall only rely on “reliable” and “probative evidence” and base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2014).

32. The appropriateness test has never been limited to mere compliance with the law. *See Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 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.”). It has been said, that each location where an establishment is located is “unique,” which requires the Board to evaluate each establishment “. . . according to the particular circumstances involved.” *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Under this test, the Board must consider the “prospective” effect of the establishment on the neighborhood.” *Id.* Among other considerations, this may include the Applicant's efforts to mitigate or alleviate operational concerns,³ the “character of the neighborhood,”⁴ the character of

³ *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 369 (D.C. 1982) (saying that the Board could rely on testimony related to the licensee's “past and future efforts” to control negative impacts of the operation); *Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 992 (D.C. 1985) (saying the Board may consider an applicant's efforts to “alleviate” operational concerns).

⁴ *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979).

the establishment,⁵ and the license holder's future plans.⁶ Thus, the appropriateness test seeks to determine whether the applicant's future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances. D.C. Council, Bill 6-504, the "District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986," Committee on Consumer and Regulatory Affairs, 38 (Nov. 12, 1986).

33. In *Panutat*, the court indicated that a separate establishment's operations are relevant when determining whether the ". . . owner will operate the establishment without a detrimental impact on the neighborhood" when the two businesses share or have shared similar ownership or management. *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 275 (D.C. 2013). The court also found it reasonable for the Board to conclude that how an owner operates one establishment is indicative as to how he or she would operate another. *Id.* at 275 n. 10 ("As the Board reasonably observed in its Reconsideration Order, 'how [the] owners operate Shadow Room is indicative of how they would operate Sanctuary 21.'").

34. In this case, as the owner of Taste, Mr. Nwaeze illegally transferred the license and allowed an unapproved and unrelated entity take control of the license in violation of §§ 25-301(a)(5) and 25-405. *Supra*, at ¶¶ 17-18, 21, 24. This type of behavior has a detrimental impact on public safety, because it could allow unqualified individuals, such as those who have previously had their licenses revoked, to secretly gain control of a licensed establishment. *See e.g., CSBT, Inc., t/a Town House Tavern*, License No. 024682, Board Order No. 2015-061, 1-2 (D.C.A.B.C.B. Feb. 25, 2015) (ordering suspension of liquor license due to illegal transfer to unqualified applicant that had allowed large scale fights to occur in his establishment in Adams Morgan before having his license revoked). Under these circumstances, the Board lacks sufficient evidence to determine that Mr. Nwaeze will properly (or actually) superintend and manage Hush in a manner that avoids a detrimental impact on the community. Moreover, based on Mr. Nwaeze's illegal transfer of Taste to the third party, the Board cannot credit his professed plans for the Hush based on the risk of the current business being run by an entity unidentified in the current Application. *Jones v. District of Columbia Dept. of Employment Services*, 41 A.3d 1219, 1222 (D.C. 2012) (saying that a hearing examiner may find testimony lacking in credibility when there is a "specific and legitimate reason[] for doing so.").

ORDER

Therefore, the Board, on this 27th day of May 2015, hereby **DENIES** the Application for a New Retailer's Class CT License at premises 3124 Georgia Ave., N.W. filed by Anyado Hospitality Group, LLC, t/a Hush Restaurant & Lounge.

IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed

⁵ *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1196 (D.C. 1985); *Sophia's Inc. v. Alcoholic Beverage Control Bd.*, 268 A.2d 799, 801 (D.C. 1970).

⁶ *Sophia's Inc.*, 268 A.2d at 800.

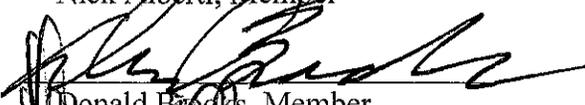
invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver a copy of this order to the Applicant, ANC 1A, and the Group of Five or More Residents and Property Owners.

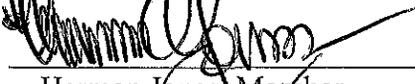
District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Member



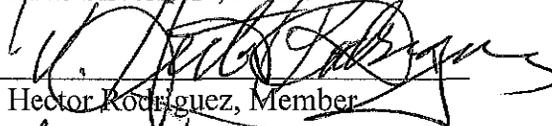
Donald Brooks, Member



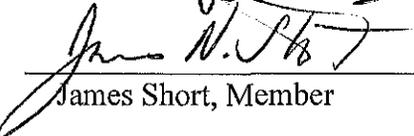
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

I concur with the decision in this case to deny the license, but my decision rests solely on D.C. Official Code § 25 -301 (a) (1) and (a-1), and § 25-401(c). Based on the evidence in the record, I conclude that the Applicant previously made a false statement on a Renewal Application for another establishment, and according to the statutory provisions referenced above, this Application should be denied.

The unrefuted evidence in this case shows that the Applicant provided false information on the Renewal Application for an establishment that he had previously sold, but whose license had not yet transferred (Finding of Fact # 21.) § 25-401(c) provides in full:

(c) An individual applicant, all of the general partners of an applicant partnership, all of the members of a limited liability company, or the president or vice-president of an applicant corporation shall sign a notarized statement certifying that the application is complete and accurate. **Any person who knowingly makes a false statement on an application, or in any accompanying statement under oath that the Mayor or the Board may require, shall be guilty of the offense of making false statements. The making of a false statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Board, constitute sufficient cause for denial of the application or revocation of the license.**

§ 25-401(c) (emphasis added). While it may be argued that D.C. Code § 25-401(c) applies to an application currently before the Board, when read in conjunction with § 25-301(a)(1) and (a-1), I conclude that such past violations must be considered by the Board in considering an application currently before the Board. § 25-301 (a)(1) and (a-1) provide as follows:

301. General qualifications for all applicants.

(a) Before issuing, transferring to a new owner, or renewing a license, the Board shall determine that the applicant meets all of the following criteria:

(1) The applicant is of good character and generally fit for the responsibilities of licensure.

(a-1) To determine whether an applicant for a new license meets the criteria of subsection (a)(1) of this section, the Board shall examine records, covering the last 10 years from the date of application, maintained by ABRA regarding prior violations of the District's alcohol laws and regulations by the applicant or establishments owned or controlled by the applicant.

The false statement in a previous application occurred in 2013 within the last ten years, the period in which the Board is directed to examine, and constituted a violation of this title and regulations which "shall in the discretion of the Board, constitute sufficient cause for denial of the application or revocation of the license." § 25-401(c).

For these reasons, denial of the application is warranted.


Ruthanne Miller, Chairperson

Pursuant to 23 DCMR § 1719.1, 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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 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).