

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

In the Matter of:	)	
	)	
Golden Eagle, Inc.	)	License Number: 087728
t/a La Forchetta	)	Case Number: 11-PRO-00045
	)	Order Number: 2012-119
	)	
Application for a New	)	
Retailer's Class CR License	)	
at premises	)	
3201 New Mexico Avenue, N.W.	)	
Washington, D.C. 20016	)	
	)	

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member  
Jeannette Mobley, Member

**ALSO PRESENT:** Golden Eagle, Inc., t/a La Forchetta, Applicant

Thomas M. Smith, Chairperson, on behalf of Advisory  
Neighborhood Commission 3D, Protestant

Michael Mazzuchi, Vice-President, on behalf of the Spring Valley  
Wesley Heights Citizens Association, Protestant

John G. Johnson, Jr., on behalf of A Group of Five or More  
Individuals, Protestant

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

**ORDER DENYING PETITION FOR RECONSIDERATION**

The official records of the Alcoholic Beverage Control Board (Board) reflect that Golden Eagle, Inc., t/a La Forchetta, (Applicant) filed an Application for a new Retailer's Class CR License located at premises 3201 New Mexico Avenue, N.W., Washington, D.C.<sup>1</sup>

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<sup>1</sup> The Application was originally filed under the trade name Al Forno Pizzeria and Trattoria.

Three parties timely protested the Application. First, A Group of Five or More Individuals (Protestants), represented by John G. Johnson Jr., filed a protest against the Application on October 3, 2011. Second, on the same day, the Spring Valley Wesley Heights Citizens Association (Association), represented by Vice-President Michael Mazzuchi, also filed a protest. Third, on October 6, 2011, Advisory Neighborhood Commission (ANC ) 3D, represented by Chairperson Thomas M. Smith, filed a protest against the Application as well.

All of the parties came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on October 17, 2011, and a Protest Status Hearing on November 30, 2011. The parties submitted a Voluntary Agreement for Board review, which was approved on the condition that the parties agree to modify some of the terms of the Voluntary Agreement.

In an email sent to the parties on February 3, 2011, ABRA notified the parties that that the Board rejected the Voluntary Agreement. The Board found that the Voluntary Agreement dealt with topics not covered by Title 25 of the District of Columbia Official Code; thus, the Agreement exceeded the Board's jurisdiction, and the Board could not enforce the proposed Voluntary Agreement. 23 DCMR § 1609(c).

In a Petition for Reconsideration, the Association objects to the Board's modifications, and has requested that the Board reconsider its decision. We deny the Association's request, and affirm our prior decision to only approve the Voluntary Agreement with the Board's modifications. Our reasoning is provided below.

### **FINDINGS OF FACT**

1. The Board requested that the parties amend the proposed Voluntary Agreement so that it would comply with § 25-446.
2. The Board first objected to the following: "Seating will remain substantially the same manner as the seating plan provided to ANC 3D and attached to this agreement as Agreement A." In order to correct this provision, the Board requested that the parties remove the phrase, "provided to ANC 3D" from Section 2. Voluntary Agreement, § 2.
3. The Board then asked the parties to remove the following from Section 2: "Applicant agrees to provide a revised diagram to ANC 3D and SVWHCA prior to making any substantial changes to the layout." Voluntary Agreement, § 2.
4. The Board then asked the parties to delete §§ 2(b), 2(c), 2(e), and 2(g) from the Voluntary Agreement. In pertinent part, the sections state, "In order to discourage casual consumption of alcohol, Applicant will not: . . . Serve pizza by the slice; . . . Accept "Eagle Bucks" student debit cards; . . . Distribute handbills or other forms of flyers on the American University campus and other forms of outdoor advertising directed specifically to AU Students; . . . Conduct any kind of gaming or other forms of gambling at the Establishment." Voluntary Agreement, §§ 2(b), 2(c), 2(e), 2(g).

5. The Board requested that the parties also remove the following sentence from Section 2 of the Voluntary Agreement: “Any request to the ABC Board for approval of deviation from the foregoing restrictions will require 60 days advance notice to ANC 3D and the SVWHCA.” Voluntary Agreement, § 2.

6. The Board further requested that the parties delete the following sentence from Section 4: “Applicant will not apply to the ABC Board for expansion or relocation of the summer garden without affording ANC 3D and the SVWHCA a minimum of 60 days advance notice of its intention to do so.” Voluntary Agreement, § 4.

7. In § 10, the Board requested that the parties replace references to ANC 3D and SVWHCA with the term, “Board,” in the following sentence: “Applicant shall provide rat and vermin control for its property and shall provide proof of its rat and vermin control contract upon the request of ANC 3D or SVWHCA.” Voluntary Agreement, § 10.

8. Finally, in § 11, the Board requested that the parties remove the following sentence: “Applicant also specifically agrees to be the sole owner of the ABC License.” Voluntary Agreement, § 11.

### CONCLUSIONS OF LAW

9. We deny the Petition for Reconsideration, because the provisions exceed the scope of Title 25, as well as violate the District of Columbia Human Rights Act, and usurps the Board’s authority.

10. Voluntary agreements have two functions: (1) the agreement settles the protestants’ claims against the applicant; and (2) the terms of the agreement becomes a part of the applicant’s license, and will later form the basis of charges against the applicant, in the case of a violation of the agreement. D.C. Code §§ 25-446, 25-823(6) (West Supp. 2012).

11. Under § 25-446, the parties may “negotiate a settlement and enter into a written voluntary agreement setting forth the terms of the settlement.” D.C. Code § 25-446(a) (West Supp. 2012). “The signatories to the agreement shall submit the agreement to the Board for approval.” D.C. Code § 25-446(b) (West Supp. 2012). The statute instructs the Board to determine if the agreement “complies with all applicable laws and regulations” and, if the Applicant “otherwise qualifies for licensure, the Board shall approve the license application, conditioned upon the licensee’s compliance with the terms of the voluntary agreement.” D.C. Code § 25-446(c) (West Supp. 2012).

12. Under 23 DCMR § 1609, a voluntary agreement

shall relate to either: (a) The operations of the establishment; (b) The sale, service, and consumption of alcoholic beverages at the establishment; or (c) A topic covered in Title 25 of the D.C. Official Code or [Title 23], including [peace,

order, and quiet; noise; litter; residential parking needs; vehicular and pedestrian safety; and residential property values].

23 DCMR § 1609.1 (2008); D.C. Code § 25-313, *et seq.* (West Supp. 2012).

13. Once incorporated into the applicant's license, the Board interprets the agreement according to the principles of contract law. Prospect Dining, LLC, t/a George v. District of Columbia Alcoholic Beverage Control Bd., No. 10-AA-605, 1 (D.C. 2011) (unpublished) (finding that a voluntary agreement "is in essence a contract between its signatories") citing North Lincoln Park Neighborhood Ass'n v. District of Columbia Alcoholic Beverage Control Bd., 727 A.2d 872, 875 (D.C. 1999); see also Prospect Dining, LLC, t/a George, Board Order No. 2011-178, ¶ 56 (D.C.A.B.C.B. May 4, 2011) (stating that "voluntary agreements should be interpreted as if they were contracts").

14. If the Board finds that the Applicant has violated the terms of the agreement, the Board has the power to fine, suspend, or revoke the Applicant's ABC license. D.C. Code § 25-446(e) (West Supp. 2012); 23 DCMR §§ 1609.2, 1609.4 (2008).

15. Turning to the proposed Voluntary Agreement, the provisions highlighted by the Board in our Findings of Fact fall outside of the scope of Title 25 of the District of Columbia Code. The provisions supported by the Association seek to have the Applicant furnish them with additional documents, provide them with extra notice, prohibit the Applicant from selling single slices of pizza, limit what types of payment the Applicant may accept, prohibit gambling, restrict the establishment's ability to advertise to American University students, and restrict who may own the establishment. See Voluntary Agreement, §§ 2, 4, 10, 11. Simply put, the Board fails to see a rational relationship between these provisions and peace, order, quiet, real property values, residential parking needs, or vehicular and pedestrian safety; or, even how such matters related to gambling, the food served at the establishment, or the type of payment the establishment may accept fall within the Board's jurisdiction. See D.C. Code § 25-201; Café Eagle, LLC, t/a Café Eagle, Board Order No. 2011-470, ¶ 35 (D.C.A.B.C.B Dec. 7, 2011) (rejecting Voluntary Agreement because ANCs do not have authority to enforce the law and additional submissions of documents, like a pest control contract, serve no purpose).

16. Moreover, there are additional reasons for affirming our position.

17. First, Section 2 of the Voluntary Agreement blatantly violates the District of Columbia Human Rights Act by mandating that the establishment unlawfully discriminate against American University students.

18. The District of Columbia Human Rights Act (DCHRA) defines restaurants as places of public accommodation. D.C. Code § 2-1401.02(24) (West Supp. 2012). Places of public accommodation may not "deny, either directly or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations" based on a person's

“matriculation.” D.C. Code § 2-1402.31(a)-(a)(1). (West Supp. 2012). Matriculation is defined as “the condition of being enrolled in a college, or university . . . .” D.C. Code § 2-1402.02(18) (West Supp. 2012).

19. On its face, the Voluntary Agreement blatantly discriminates against American University students in violation of the DCHRA. The Voluntary Agreement states that the establishment shall not accept Eagle Bucks student debit cards. Voluntary Agreement, § 2(b). There is no escaping the fact that this provision discriminates against Eagle Bucks holders on the sole basis of their matriculation. As such, so long as this provision remains, the Board cannot deem this agreement in compliance with all laws and regulations under § 25-446.

20. Second, the provision mandating that the Applicant remain the sole owner violates the Board’s power to approve ownership changes under § 25-405. Voluntary Agreement, § 11. Furthermore, under § 25-361, the Board is entitled to transfer the license when one of the enumerated statutorily defined events occur. D.C. Code § 25-361 (West Supp. 2012). As such, we reject Section 11, because it usurps the authority granted to the Board.

21. For these reasons, we deny the Petition for Reconsideration.

22. As a final note, we deny the Association’s separate request to amend the Voluntary Agreement that the other parties have entered into if the Association is successful on appeal. The other parties have not challenged the Board’s request to modify the Voluntary Agreement. As such, the Voluntary Agreement they enter into is binding, and the Board may not alter it later based on Association’s success or lack thereof on appeal. Of course, this does not preclude the other parties from amending the agreement later under § 25-446.

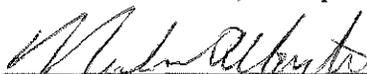
### **ORDER**

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 21st day of March 2012, **DENIES** the Petition for Reconsideration filed by the Spring Valley Wesley Heights Citizens Association.

District of Columbia  
Alcoholic Beverage Control Board

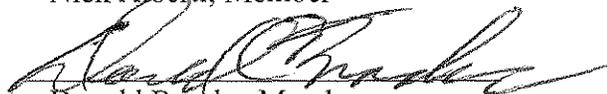
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Ruthanne Miller, Chairperson



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Nick Alberti, Member

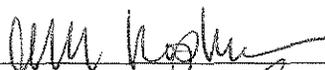


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Donald Brooks, Member

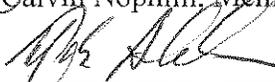
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Herman Jones, Member



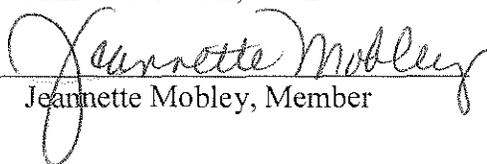
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Calvin Nophlin, Member



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Mike Silverstein, Member



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Jeannette Mobley, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, N.W., 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 (April 2004) 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).