

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

In the Matter of:

Zest Bistro, Inc.
t/a Zest Bistro

License No.: ABRA-082432
Order No.: 2016-700

Holder of a Retailer's
Class CR License

at premises
735 8th St., S.E.
Washington, D.C. 20003

Michael D. Fonseca, Counsel, of the Mallios & O'Brien, on behalf of Zest Bistro, Inc., t/a Zest Bistro

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Mafara Hobson, Member
Jake Perry, Member

**ORDER DENYING MOTION TO VACATE ORDER CANCELLING LICENSE
AND TO ALLOW RENEWAL AND TRANSFER IN SAFEKEEPING**

Zest Bistro, Inc., t/a Zest Bistro (Licensee), a former holder of a Retailer's Class CR License (License), located at 735 8th St., S.E., Washington, D.C. 20003, seeks to have its cancelled License reinstated by the Alcoholic Beverage Control Board (Board).

On May 4, 2016, the Board issued an Order Cancelling License due to the Licensee's failure to renew its License by March 31, 2016. *See In the Matter of Zest Bistro, Inc., t/a Zest Bistro*, Board Order No. 2016-241 (D.C.A.B.C.B. May 4, 2016).

On November 30, 2016, the Licensee filed a Motion to Vacate Order Cancelling License and to Allow Renewal and Transfer of License in Safekeeping (Motion). For the reasons explained below, the Licensee's Motion is denied.

The Licensee initially obtained its License in 2009. The License was subject to renewal in 2010, 2013, and 2016. In February 2016, the Alcoholic Beverage Regulation Administration (ABRA) provided the Licensee with notice of the renewal deadline date. ABRA's records do not indicate that the notice was returned as undelivered. Notwithstanding the notification, the Licensee failed to renew its License.

Due to its failure to renew the License, the Board issued the Order to Cease and Desist on April 27, 2016. The Order to Cease and Desist was mailed to the Licensee and it, too, was not returned as undelivered. The Order to Cease and Desist notified the Licensee that its License was at risk of cancellation unless it was renewed. Again, the Licensee failed to renew.

On May 4, 2016, the Board issued the Order Cancelling License due to the Licensee failing to renew its License. Like the previous notices, ABRA mailed the Order Cancelling License to the Licensee's address of record and it was not returned as undelivered. The License was officially cancelled on May 9, 2016.

The Licensee now seeks to have its License reinstated – well over six months after cancellation – so that it can renew and place the License in safekeeping while it seeks to transfer the License.¹ In support of its Motion, the Licensee contends that the Order Cancelling License states that ABRA's Enforcement Division determined that the establishment was out of business. *Licensee's Motion to Vacate Order Cancelling License and to Allow Renewal and Transfer of License in Safekeeping*, at 2. Therefore, the Licensee contends that it could not have received notice of the Order cancelling the License because it was out of business. *See id.* ("It is not clear that Licensee received the Cancellation Order or the Order on Cease and Desist, [and that] [u]pon information and belief, the Licensee did not receive notice of the cancellation order nor did the Landlord/Transferee.")

The Board finds the Licensee's argument to be without merit. As previously stated, none of the notices ABRA sent to the Licensee were returned as undelivered. Thus, it is presumed that the Licensee received notice.

Additionally, the Licensee is not a new to the renewal process. It obtained its license in 2009. The Licensee was fully aware of its obligation to renew its License every three years as it has done in the past. *See* 23 DCMR § 207.2. If the Licensee was no longer operating, it was its required to surrender the License for cancellation or placement into safekeeping pursuant to D.C. Official Code § 25-791.

The Licensee also argues that the Landlord/Transferee did not receive notice of the Order Cancelling License. This argument falls short as well. The Landlord/Transferee is not the holder of the license; so, it was not entitled to notice. Notwithstanding that, in July when the Landlord/Transferee was negotiating a lease with a prospective tenant to take over the Licensee's space, it became aware that the License

¹ The Licensee seeks to transfer the License to Dowel-8th Street LLC (Landlord/Transferee), the landlord of the building.

might have been cancelled but it did not immediately seek clarification about the status of the License. *See Affidavit of Brian Adams*, at 1 (“During July 2016 we were negotiating a lease with a prospective tenant to take over the space . . . I believe then we had heard rumors that the license may have lapsed but wanted a signed lease before we addressed the situation and a potential lease termination agreement with Zest Bistro.”). The lease agreement ultimately fell through and the Landlord/Transferee did not pursue the matter further.

On November 2, 2016, the Landlord/Transferee’s leasing broker informed the Landlord/Transferee that someone from the Business Improvement District told him that the Licensee did not renew its License. *Id.* On November 14, 2016, the Licensee and the Landlord/Transferee entered into a Termination Agreement with a provision requiring the reinstatement of the License. *Id.*; *Termination Agreement*, § 8, at 3.

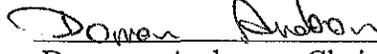
It was not until four months after it knew or should have known the Licensee’s License had been cancelled, that the Landlord/Tenant sought reinstatement of the License. At no point did the Landlord/Transferee contact ABRA to inquire about the status of the License. Instead, the Licensee and the Landlord/Transferee entered into a Termination Agreement that includes a provision requiring the Licensee to obtain reinstatement of the License. *Termination Agreement*, § 8, at 3.

For the aforementioned reasons, the Licensee’s Motion to Vacate Order Cancelling License and to Allow Renewal and Transfer of License in Safekeeping is denied.

Accordingly, it is this 21st day of December 2016, **ORDERED** that:

1. The Licensee’s Motion to Vacate Order Cancelling License and to Allow Renewal and Transfer of License in Safekeeping is **DENIED**.
2. Copies of this Order shall be sent to the Counsel for the Licensee.

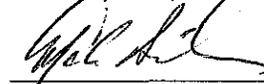
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



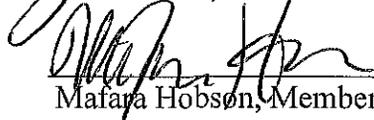
Nick Alberti, Member



Mike Silverstein, Member



James Short, Member



Mafara Hobson, Member

Jake Perry, Member

Pursuant to D.C. Official Code § 25-433(d)(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, 2000 14th Street, N.W., Suite 400S, Washington, DC 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 (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).