

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

In the Matter of:)
)
Acostas Group Corporation)
t/a DC Grill Express)
)
Applicant for a New)
Retailer’s Class CR License)
)
at premises)
1917 18th Street, N.W.)
Washington, D.C. 20009)
_____)

Case No. 15-PRO-00076
License No. ABRA-099452
Order No. 2015-393

Acostas Group Corporation, t/a DC Grill Express (Applicant)

Noah Smith, Chairperson, Advisory Neighborhood Commission (ANC) 2B

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

**ORDER ON SETTLEMENT AGREEMENT AND
WITHDRAWAL OF ANC 2B’S PROTEST**

The Application filed by Acostas Group Corporation, t/a DC Grill Express, for a new Retailer’s Class CR License, was protested by ANC 2B.

The official records of the Board reflect that the Applicant and ANC 2B have entered into a Settlement Agreement (Agreement), dated July 30, 2015, that governs the operation of the Applicant’s establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Chairperson Noah Smith and Commissioner Nicole Mann, on behalf of ANC 2B, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 2B.

Accordingly, it is this 12th day of August, 2015, **ORDERED** that:

1. The Application filed by Acostas Group Corporation, t/a DC Grill Express, for a new Retailer's Class CR License, located at 1917 18th Street, N.W., Washington, D.C., is **GRANTED**;
2. The Protest of ANC 2B in this matter is hereby **WITHDRAWN**;
3. The above-referenced Settlement Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications:

Section 1 (Nature of the Business) – The eighth sentence shall be modified to read as follows: “Applicant agrees to sell beer, wine and liquor as allowed by law.”

Section 4 (Nature of Live Music) – The last sentence of the first paragraph shall be modified to read as follows: “There will be no designated dance floor, and dancing among patrons will be discouraged by Applicant.”

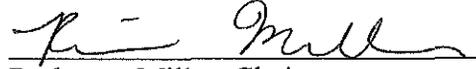
Subsection 5.1 (Sound Control) – The following sentence shall be removed: “Applicant shall, if requested by any of the Protestants, send a representative to the Protestant's home to determine acceptable audio levels.”

Section 13 (Successors and Partial Invalidity) – The term “and assigns” shall be removed.

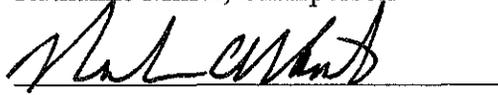
The parties have agreed to these modifications.

4. Copies of this Order shall be sent to the Applicant and ANC 2B.

District of Columbia
Alcoholic Beverage Control Board



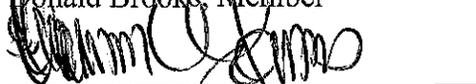
Ruthanne Miller, Chairperson



Nick Alberti, Member

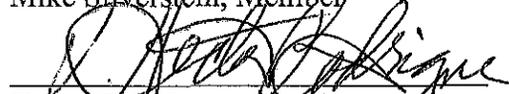


Donald Brooks, Member

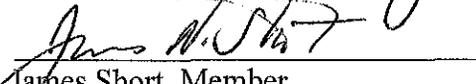


Herman Jones, Member

Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Pursuant to D.C. Official Code § 25-433, 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).

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Amendment") MADE and entered into this 30th day of July, 2015, by and among **Acostas Corporation, dba DC Grill Express** (the "Applicant") and **Advisory Neighborhood Commission 2B ("ANC 2B")** (ANC 2B is sometimes hereinafter referred to collectively as the "Protestants")

WITNESSETH

WHEREAS, Applicant is the owner and operator as the business known as DC Grill Express located at 1917 18tht NW, Washington DC (the "Business") and is the holder of a Class "CR" alcoholic beverage license (the "License");

WHEREAS, Applicant has requested that the Alcoholic Beverage Control Board (the "Board") approve hours of operation and alcoholic beverage sales/service/consumption for premises and sidewalk café on Sunday from 9am – 11pm, and Monday through Saturday from 10am – 2pm; and additionally has requested the Board approve hours of live entertainment for premises and sidewalk café Sunday through Thursday from 6pm – 11pm;

WHEREAS, Protestants have filed with the Board a protest opposing the requested hours of sale and live entertainment on the basis of peace, order, and quiet;

WHEREAS, in recognition of the Board's policy of encouraging parties of a protested proceeding to settle their differences by reaching settlement agreements, the Applicant will agree to adopt certain measures to address the Protestants' concerns as a formal condition of its license and the Protestants will agree to the requested substantial change and shall withdraw the protest, provided the Settlement Agreement is incorporated into the Board's order approving the substantial change.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Nature of the Business:

Applicant agrees to manage ^{WFO} and operate a full service restaurant, serving lunch, dinner, and brunch. Its primary focus is to be a "neighborhood" establishment serving the immediate community in which it operates. It further agrees that it is not considered a "destination" restaurant, and will therefore not promote itself as such. This does not restrict the Applicant's ability to obtain restaurant reviews and provide discounts and coupons to its customers.

Accordingly, the following provisions are structured to support the successful operation of such an establishment. Any deviation from this model will be considered a violation of the terms of this Settlement Agreement and subject to any/all remedial provisions by the Alcoholic Beverage Regulation Administration regulations and statutes. Applicant agrees not to promote or participate in bar or pub "crawls." Applicant agrees to sell beer, wine, and

margaritas only. The hours of alcoholic beverage sales, service, and consumption for premises will be:

Indoors:

Sunday through Thursday
9am – 10pm

Friday and Saturday
9am – 11pm

Sidewalk Café Outdoors:

Sunday through Thursday
9am – 9pm

Friday and Saturday
9am – 10pm

2. Trash/garbage/rodents:

Applicant shall maintain regular trash/garbage removal service, regularly remove trash from the trash and dumpster area, and see that the trash and dumpster area remain clean. Applicant shall deposit trash and garbage only in rodent-proof dumpsters, and shall see that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed.

Applicant will make every reasonable effort to eliminate food sources for rodents and eliminate the rat population.

3. Exterior including public space:

Applicant shall assist in the maintenance of the alleyway and the space in front of the establishment to at least 18 inches outward from the curb as needed to keep them free of trash and to remove snow and ice from the sidewalk and comply with all applicable DC laws and regulations in these respects. Applicant shall make every reasonable effort to prevent or disperse loitering or any source of noise or disturbance in the areas in front of or to the rear of the premises during business hours and at closing, and to cause patrons to leave these areas after closing. Applicant will provide for the proper removal of grease and fatty oils from the establishment and will not deposit grease or fatty oils in the dumpster.

4. Nature of Live Music:

Applicant agrees to have live entertainment in the form of one live performer only, and that the live music be permitted inside the premises only. At no time will the live music operate on the sidewalk café. Applicant agrees to have no cover charge to enter the premises. Applicant is prohibited from having events by private promoters, events that are advertised publicly, events that seek to have a cover charge, or any event that is demonstrative of a "club" or "lounge" operation. Such events shall be deemed a violation of this Settlement Agreement. There will be no designated dance floor, and no dancing permitted except with special permission.

Applicant has conceded to these limitations with the understanding that the Agreement will be reviewed by the parties in six months to determine whether the endorsement has had an undue impact on the neighborhood. If experience demonstrates that the applicant's extended entertainment endorsement have had an undue impact on the neighborhood, the Settlement Agreement will be revisited to reduce the hours and days that the live music are permitted.

5. Sound Control:

Applicant will take the following measure in an effort to minimize disturbances arising from noise from the live entertainment:

- 5.1 Applicant shall ensure, through the consistently enforced limitation of sound levels, that all sound coming from the 1st floor of the restaurant and the sidewalk cafe remains at all times within applicable noise-level limitations and is at no time detectable to neighboring residents in their homes. Applicant shall, if requested by any of the Protestants, send a representative to the Protestant's home to determine acceptable audio levels.

5.2 Applicant acknowledges familiarity with and will comply with noise-control provisions of District of Columbia law and regulations, including preventing emissions of sound, capable of being heard outside the premises, by any musical instrument or amplification device or other sound device or source of sound or noise (including televisions), in accordance with DCRM 905. The doors, retractable roof, and windows of the premises will be kept closed at all times during business hours when music is being played or a sound amplification device (including television) is being employed in the premises, except when persons are in the act of using the door for ingress to or egress from the premises.

6. Hours: 6 P ENTERTAINMENT ^{10:30}

Furthermore, applicant agrees that live music on Sunday through Saturday will commence no earlier than 6pm and will end no later than 10pm.

7. Nature of sidewalk café:

Applicant agrees to maintain at least 10 feet clearance between the sidewalk and the curb in front of the premises at all times, including the existing tree box in the front of the premises. Applicant agrees to maintain an unenclosed sidewalk café.

8. Conditions Beyond Applicant's Control, Reasonable Efforts

If Applicant is in any way delayed or prevented from performing any of its obligations under this Agreement due to fire, act of God, governmental act or failure to act, strike, labor dispute, inability to procure materials or any other cause beyond Applicant's reasonable control (whether similar or dissimilar to the foregoing events), then the time for performance of such obligation

shall be excused for the period of such delay or prevention. No provision of this agreement shall be considered breached if Applicant has made reasonable and customary efforts to comply.

9. Notices

In the event of a violation of the provisions of the Settlement Agreement, Applicant shall be notified in writing of such violation. Any notices required to be made under the Settlement Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or hand delivered, to the other parties to the Settlement Agreement. Notice is deemed to be received upon mailing. Notice is to be given as follows:

If to Applicant:

Acostas Corporation

1917 18th Street NW

Washington DC 20009

If to Protestants:

ANC 2B

9 Dupont Circle NW

Washington DC 20036

Applicant may change the notice addresses listed above by written notice to the signatories hereto at the addresses listed below their signatures. Failure to give notice shall not constitute

waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the Alcoholic Beverage Control Board.

10. Withdrawal of Protest

Protestants agree to the approval of the substantial change requested by the Applicant and withdrawal of their protests as of the Execution Date of this Settlement Agreement, provided that the Amended Agreement is incorporated.

11. Entire Agreement

The Settlement Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter herein and it shall not be changed or terminated orally. There are no other warranties or representations made or relied upon by any of the parties to this matter other than those expressly set forth in said Settlement Agreement. The Settlement Agreement shall be construed in accordance with the laws of the District of Columbia.

12. Counterparts

This Settlement Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. Successors and Partial Invalidity

The Settlement Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns. In the event any part of the Settlement Agreement

should be determined by a court or agency of competent jurisdiction to be invalid or unenforceable, the validity of the rest of the Settlement Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Settlement Agreement did not contain the particular part held to be invalid or unenforceable.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the day and year (Execution Date) stated below:

APPLICANT:

Acostas Corporation

By: Jesse Acosta

Date Signed: [Signature] 7-30-2015

PROTESTANTS:

ANC 2B:

By: [Signature]

Title: NORAH SMITH, CHAIR

Date Signed: 7/30/15

By: [Signature]

Title: Nicole Mann OBOE

Date Signed: 7/30/15

NR2A-099452

By: _____

Title: _____

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

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