

THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:)
)
Anita's Supermarket, LLC)
t/a Anita's Supermarket)
)
Application for a Retailer's Class B)
License - renewal)
at premises)
201 15th Street, NE)
Washington, D.C.)
_____)

Previous order vacated

Case no.: 11489-04/005P
Order no.: 2005-74

Anita's Supermarket, LLC, Applicant

Nicholas Alberti, Commissioner, on behalf of Advisory Neighborhood Commission 6A,
and Heather Scott, on behalf of a group of more than five (5) individuals, Protestants

BEFORE: Charles A. Burger, Chairperson
Vera M. Abbott, Member
Judy A. Moy, Member
Audrey E. Thompson, Member
Peter B. Feather, Member
Albert G. Lauber, Member
Eartha Isaac, Member

**ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWN PROTEST AND
DISMISSAL OF PROTEST**

On February 9, 2005, the Board issued an Order approving and amending a voluntary agreement, dated December 6, 2004, between the Applicant and Nicholas Alberti, Commissioner, on behalf of Advisory Neighborhood Commission 6A, and Heather Scott, on behalf of a group of more than five (5) individuals. Pursuant to Title 23 of the District of Columbia Municipal Regulations ("DCMR") § 1719.1 (2004), a timely Motion for Reconsideration of the Board's February 9, 2005 Order was filed by the Protestants. A motions hearing was held before the Board on May 4, 2005, to hear oral arguments by the parties regarding the Board's amendments to the December 6, 2004 agreement. At the conclusion of the May 4, 2005 hearing, the Board vacated its February 9, 2005 Order and the parties agreed to combine provisions 1A. and 1B. of the December 6, 2004 agreement into a new provision 1A. to read as follows: "Single individual containers of beer, malt, or ale shall only be sold by the Applicant in quantities of two (2) or more." The Board is also striking provision 1C. because the new provision 1A., as agreed to by the parties at the May 4, 2005 hearing, renders the intent of provision 1C. null and void. Finally, the Board is striking the provision designation 1D. for clarification purposes and inserting the provision designation 1B. in its place.

Additionally, the Board notes two pertinent items contained in the vacated February 9, 2005 Order. First, the protests of the following individuals remain dismissed because none of these individuals appeared at the December 10, 2003 roll call hearing or designated a representative to appear at the roll call hearing: Drew Golin, Sara Walder, Laelia Gilborn, Jim Silver, Lance Hassel, Amy Metziger, Aubrie Ohlde, and Chris Rager. Second, subsequent to the filing of a valid protest, a transfer of ownership application was filed with the Board to transfer ownership of the license from Anita's Supermarket, LLC, t/a Anita's Supermarket, to S&T Supermarket and Deli, Inc., t/a S&T Supermarket and Deli. The transfer of ownership application was approved by the Board on February 9, 2005 making S&T Supermarket and Deli, Inc., t/a S&T Supermarket and Deli, eligible to enter into a voluntary agreement with the Protestants.

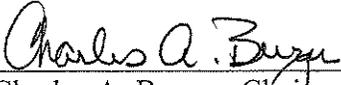
Pursuant to the amended agreement, dated December 6, 2004, the Protestants have agreed to withdraw their protests, provided, however, the Board's approval of the pending renewal application is conditioned upon the licensee's continuing compliance with the terms of the agreement.

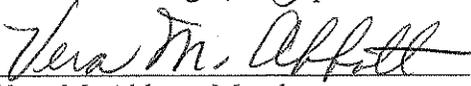
Accordingly, it is this 18th day of May 2005, **ORDERED** that:

1. The protests of Drew Golin, Sara Walder, Laelia Gilborn, Jim Silver, Lance Hassel, Amy Metziger, Aubrie Ohlde, and Chris Rager, are **DISMISSED**;
 2. The protests of Nicholas Alberti, Commissioner, on behalf of ANC 6A, and Heather Scott, on behalf of a group of more than five (5) individuals, are **WITHDRAWN**;
 3. The renewal application of Anita's Supermarket, LLC, t/a Anita's Supermarket, for a Retailer's Class "B" License at 201 15th Street, NE, Washington, D.C., is **GRANTED**;
 4. The request to change the trade name of the establishment to S&T Supermarket and Deli, is **APPROVED**;
 5. The above-referenced agreement, as amended, is **INCORPORATED** as part of this Order; and
 6. Copies of this Order shall be sent to Drew Golin, Sara Walder, Laelia Gilborn, Jim Silver, Lance Hassel, Amy Metziger, Aubrie Ohlde, Chris Rager, the Protestants, and the Applicant.
-

Anita's Supermarket, LLC
t/a Anita's Supermarket
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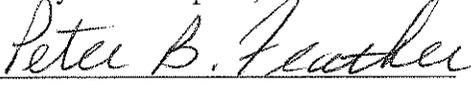
District of Columbia
Alcoholic Beverage Control Board


Charles A. Burger, Chairperson

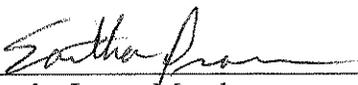

Vera M. Abbott, Member


Judy A. Moy, Member

Not voting
Audrey E. Thompson, Member


Peter B. Feather, Member


Albert G. Laubet, Member


Eartha Isaac, 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, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.



District of Columbia Government
Advisory Neighborhood Commission 6A
Box 75115
Washington, DC 20013

OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE
REGULATION ADMINISTRATION



15 MAR -1 P 3:31

BY Flc

February 24, 2005

Charles Burger
Alcoholic Beverage Control Board, Suite 7200
941 N. Capitol Street, NE
Washington, DC 20002

RE: Feb 9, 2005 Board order for Application no. 11489-04/005P, Order no. 2005-36, Matter of Anita's Supermarket, LLC Class B license renewal at premises 201 15th St., Washington, DC

Dear Mr. Burger,

We ask that the ABC Board reconsider its decision to amend the voluntary agreement between ANC 6A, community protestants and Mr. Assefa Arefaine the Applicant for the S&T Supermarket and Deli. Specifically we ask that the Board amend its decision concerning paragraphs 1.A and 1.B of the original agreement. The original wording of these paragraphs is as follows:

- 1.A The Applicant shall not divide a manufacturer's retail pack of more than one container of malt liquor to sell an individual container.**
- 1.B The Applicant shall not sell, give, offer, expose for sale or deliver an individual container of malt liquor i.e., a container not included as part a manufacturer's retail package of more than one container.**

The intent of the original wording of paragraphs 1.A and 1.B was to allow the sale of malt liquor products **only** in manufacturer's retail packages of **two or more containers** (e.g., 4-packs, 6-packs, cases).

In the Feb 9 decision, the Board reworded and combined the original paragraphs 1.A and 1.B into one paragraph that reads: **1.A Malt liquor shall be sold by the Applicant only in a manufacturer's retail package.** In doing so, the Board nullified paragraphs 1.A and 1.B of the

We respectfully request that the ABC Board amend the new Feb 9 wording of paragraph 1A. to read as follows: *1.A. Malt liquor shall be sold by the Applicant only in a manufacturer's retail package of two or more individual containers.* (Italics indicate Boards Feb. 9, 2005 wording).

We are willing to accept an amended agreement if it accurately reflects, at a minimum, the conditions defined in the original agreement submitted on Dec 13, 2004. The amended agreement approved by the Board on Feb 9, 2005 fails to reflect the conditions defined in sections 1.A and 1.B of the original agreement. By nullifying those conditions the Board created a voluntary agreement that is in conflict with the agreement entered into by ANC 6A, Heather Scott as representative of community protestants and Mr. Assefa Arefaine. This new agreement is completely unacceptable to the ANC 6A.

The Board's Feb 9, 2005 decision states that the ANC 6A protest of the Class B license renewal is withdrawn. We have never formally withdrawn the protest of the license renewal. Our intent to withdraw the protest, as expressed to Mr. Fred Mossally in a Dec 13, 2004 e-mail (attached), was contingent on the acceptance of the original voluntary agreement submitted to the Board on Dec 13, 2004. Since the Board nullified the conditions defined in paragraphs 1.A and 1B of the original Dec 13, 2004 without a compelling basis, we object to the Board's statement that the ANC 6A has withdrawn our protest. We believe that the track history of the establishment's operations clearly indicates that, even under new management, its negative effects on peace order and quiet and its negative effects on property values will persist without the restrictions set forth the original Dec 13, 2004 voluntary agreement. We reserve our right to continue this protest and will do so until the Board approves an agreement that accurately reflects the intent of the original Dec 13, 2004 agreement and is acceptable to all parties.

On Behalf of ANC 6A



Nicholas Alberti

Attachments (3)

Cc: Mr. Assefa Arefaine
Ms. Heather Scott



4 DEC 13 P 4: 53

The Parties Agree As Follows:

1. Requirements for sale / provision of single containers of alcohol beverages BY ZPC
 - A. The Applicant shall not divide a manufacturer's retail pack of more than one container of malt liquor to sell an individual container.
 - B. The Applicant shall not sell, give, offer, expose for sale or deliver an individual container of malt liquor i.e., a container not included as part a manufacturer's retail package of more than one container.
 - C. The Applicant shall not sell a single individual container of beer or ale that has been displayed in a refrigerated case immediately prior to purchase.
 - D. The Applicant shall not sell, give, offer, expose for sale, or deliver an individual container of wine or fortified wine in a container with a capacity of less than 750 ml.
2. Clear bags must be used for all purchases of sales of individual containers of beer, ale, malt liquor that are not packaged as part of a manufacturer's retail package of more than one container.
3. Ban on Sale/Provision of Other Items:
 - A. Single Cigarettes: Applicant shall not sell, give, offer, expose for sale, or deliver individual single cigarettes.
 - B. "Go-cups":
 - 1) Applicant shall not sell, give, offer, expose for sale, or deliver "go-cups" or servings of plain ice in a cup.
 - 2) Per the Alcoholic Beverage regulations, a "go-cup" is defined as: "a drinking utensil provided at no charge or a nominal charge to a customer for the purpose of consuming alcoholic beverages off the premises of an establishment."
 - C. Products associated with illegal drug activity:
 - 1) Applicant agrees to not sell, give, offer, expose for sale, or deliver products associated with illegal drug activity.
 - 2) These items are defined as: "cigarette rolling papers, pipes, needles, small bags, or any other items which may be regarded as drug paraphernalia."
4. Hours of Operation for Sales of Alcohol shall be restricted to the hours between 9 am and 10 pm.
5. Public Space Cleanliness and Maintenance: The Applicant will maintain the public space (minimally the front sidewalk up to and including the gutter in front of the subject premises, and the alleyway behind the subject premises) adjacent to the establishment in a clean and litter-free condition by:
 - A. Picking up trash, including beverage bottles and cans, and all other trash a minimum of twice daily (immediately before business hours and once between 5:00 p.m. and 8:00 p.m.).
 - B. Exercising due diligence to prevent and/or rid vermin infestation in and around the establishment, including following, minimally, the recommendations and guidelines of the Vector Control Division of the Department of Public Works.
 - C. Planting, watering, and generally tending to tree boxes directly in front of the subject premises, if any.
 - D. Maintaining regular trash removal service. Ensure that the trash and dumpster area(s) remain clean.
 - E. Remove snow and/or ice from sidewalks fronting (includes sidewalks on the sides of corner buildings) within time limits set by the District of Columbia for such snow and/or ice removal.
 - F. Promptly removing graffiti written on the exterior walls of the property. Promptly is defined as within two (2) weeks of graffiti's appearance.



OFFICE OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE
LICENSING ADMINISTRATION

4 DEC 13 2 05 PM '04

BY _____

6. Signage / Loitering / Illegal Activity:
 - A. The Applicant will not directly or indirectly, sell or deliver alcohol to any intoxicated person or to any person who appears to be intoxicated.
 - B. The Applicant shall post a notice kept in good repair and visible from point of entry a sign, which states:
 - 1) The minimum age requirement for purchase of alcohol,
 - 2) The obligation of the patron to produce a valid identification document in order to purchase alcohol.
 - C. The Applicant shall make every effort to prohibit and prevent loitering and criminal activity on or in front of the establishment, to include:
 - 1) Posting a sign kept in good repair in a highly visible location requesting customers not to contribute to panhandlers.
 - 2) Posting a sign kept in good repair in a highly visible location announcing 'No Loitering'.
 - 3) Asking loiterers to move on whenever they are observed outside the establishment.
 - 4) Calling the Metropolitan Police Department (MPD) to remove loiterers if they refuse Applicant's request to move on.
 - 5) Calling the Metropolitan Police Department if illegal activity is observed or when loiterers refuse to leave from private property,.
 - 6) Keeping a log (i.e. a written record of dates and times) of when the MPD was called for assistance.
 - D. The Applicant agrees that the total signage for alcohol and tobacco products in the front window(s) shall be limited to 25% of the total window area.
 - E. The Applicant shall receive, at their request, and at no cost, a sign to post within their establishment (provided by the ANC6A ABL Committee) that outlines the primary points of this agreement
7. Reporting to ANC 6A: The Applicant must appear before the ANC 6A Alcohol Beverage Licensing Committee upon request of the ANC to discuss issues and concerns related to the prior operations or the impending renewal of their license. The request must be made by the ANC in writing and delivered at least ten calendar days prior to the date of the public meeting.
8. Regulations: In addition to the requirements of this agreement, the Applicant will operate in compliance with all applicable laws and regulations.
9. Miscellaneous:
 - A. The Applicant shall deny support of the installation of pay phones around the establishment (externally). The Applicant shall have existing pay phones (if any) removed from the exterior of the establishment at the end of the current contract.
 - B. A person with an ABC Board certified manager's license shall be present during all hours of operation.
 - C. The Applicant will comply with the DC Government Clean Hands Act regulations.
10. Enforcement:
 - A. If any party hereto believes in good faith that the Applicant is in violation of this agreement, written notice specifying the alleged violation shall be delivered to the Applicant by Certified mail and the Applicant shall have ten (10) days after receipt of such written notice to come into compliance with this agreement or respond to said alleged notice of default
 - B. The Applicant and the ANC 6A Commission agree to enter into this agreement. If the Applicant should breach the conditions of this agreement, and notice of the violation(s) has been made as prescribed in paragraph 10.A above, it is understood by all parties that the ANC 6A, or others parties with standing to file a protest may immediately petition the ABC Board for a "show cause" hearing pursuant to Title 25 of the DC Enactment and Related Amendments Act of 2001, Section 25-446.

District of Columbia Government
Advisory Neighborhood Commission 6A
Box 75115
Washington, DC 20013



- C. This cooperative agreement is binding on the Applicant and will continue in force for all subsequent renewals of the license and for any and all subsequent Applicants operating at this location.
- D. The term of this Agreement shall not be altered unless changes are agreed to by all parties or such change is required by the District of Columbia government or by rule of law.

In Witness Whereof

The parties have affixed hereto their hands and seals.

Applicant:

By: ASSEFA AREFAINE
Date: 12/7/04
Signature: Assafa Arefaine

BY ZRC

DEC 13 P 4:53

OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE
ADMINISTRATION

Advisory Neighbor Commission 6A Single Member District 04 Representative:

By: Nicholas Alberti
Date: 12/06/04
Signature: Nicholas Alberti

Community Citizen Group Representative:

By: HEATHER SCOTT
Date: 12/06/04
Signature: Heather Scott

Advisory Neighbor Commission 6A Representative:

By: Joseph Fengler, Chair ANC 6A
Date: 12/12/04
Signature: Joseph Fengler

YAHOO! MAIL

Print - Close Window

Date: Mon, 13 Dec 2004 08:05:55 -0800 (PST)

From: "Nicholas Alberti" <alberti6a04@yahoo.com>

Subject: Protest of Anita's Supermarket

To: "Fred Moosally" <Fred.Moosally@dc.gov>

CC: "Heather Scott" <scoth@cof.org>, "Joe Fengler" <fengler6a02@yahoo.com>, "Maurice Evans" <mauriceevans@comcast.net>

Hi Fred,

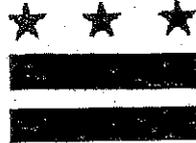
I'm please to report that the community protestants and the ANC6A have signed a voluntary agreement with the new owner of Anita's Supermarket at 210 15th St NE (new name is S&T Supermarket and Deli). I will deliver the signed agreement to ABRA early this week. The protestants (the community group and the ANC6A) intend to withdraw our protest of this Class B license renewal application contingent upon the Board's approval of the voluntary agreement. A letter providing official notice of our intent will be sent shortly.

Regards,
Nick Alberti
301.763.4236 (day)

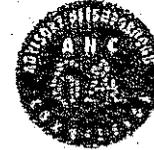
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00:



District of Columbia Government
Advisory Neighborhood Commission 6A
Box 75115
Washington, DC 20013



December 9, 2003

Charles Burger
Alcoholic Beverage Control Board, Suite 7200
941 N. Capitol St. NE
Washington, DC 20002

Dear Mr. Burger:

I, Joseph Fengler, hereby give Mr. Nicholas Alberti, Ms. Jessica Ward or Mr. Michael Musante permission to represent my views before the Alcoholic Beverage Regulation Administration or any other city agency or legal venue regarding the liquor license of Anita Market at 201 15th St., NE.

Joseph Fengler
Signature

December 9, 2003
Date

Joseph Fengler, Chair
ANC 6A
e-mail: fengler6a02@yahoo.com
202-423-8868

cc: Ms. Marie Delaney, Director, Alcoholic Beverage Regulation Administration