



agreement with the Applicant, which the Board approved and incorporated in Board Order No. 2010-371. ANC 5A did not file a protest against this Application.

The Protestants and the Applicant failed to reach an agreement during mediation on January 29, 2010. The Board held the Protest Hearing on March 3, 2010. The Protest Hearing was continued on May 5, 2010, at which time further testimony was taken and the parties rested. The Applicant and Protestants also submitted Proposed Findings of Fact and Conclusions of Law, which the Board has included in the record.

On June 23, 2011, the Board found in favor of the Applicant. The Board found that the Application is appropriate for the neighborhood, the Applicant is the true owner of the establishment, and D.C. Official Code § 25-314(b) does not prohibit the Application. The Brookland Café, LLC, t/a Brookland Café, Board Order No. 2010-370, 12-13 (D.C.A.B.C.B. Jun. 23, 2010). Subsequently, the Protestants appealed the Board's ruling. On August 26, 2011, the District of Columbia Court of Appeals remanded the matter back to the Board for further consideration. Don Padou and Abigail Padou v. District of Columbia Alcoholic Beverage Control Board, No. 10-AA-793, 7 (D.C. 2011).

The court found that Board Order No. 2010-370 failed to make four required findings:

- (1) the Board did not find that the Applicant does not owe more than \$100.00 to the District of Columbia under D.C. Official Code § 25-301(b); and specifically, the Board failed to determine whether three outstanding Litter Control Administration Act liens issued to the Applicant prohibit the Application;
- (2) the Board did not find that the Applicant possesses good character and is generally fit for the responsibilities of licensure under D.C. Official Code § 25-301(a)(1);
- (3) the Board did not discuss whether the Application should be denied under D.C. Official Code § 25-338, which prohibits successive applications; and specifically, the Board did not find whether the Applicant's prior applications in October 2007, July 2007, and April 2009 bar the current Application; and
- (4) the Board did not find that the door connecting the establishment to the Brookland Inn is effectively closed under D.C. Official Code § 25-761.

Id. at 3.

On October 5, 2011, the Board ordered the Applicant to cease and desist operations until the Board could address the matters raised by the District of Columbia Court of Appeals. The Brookland Café, LLC, t/a Brookland Café, Board Order No. 2011-446 (D.C.A.B.C.B. Oct. 5, 2011).

On October 12, 2011, the Board held a remand hearing to hear further evidence regarding these issues. We note that the Protestants object to the Board accepting new

evidence into the record under D.C. Official Code § 25-433(b). *Transcript (Tr.)*, October 12, 2011 at 11. However, this objection is misplaced based on the court's ruling and 23 DCMR § 1717.1 of the regulations. The court instructed the Board to "make further findings and conclusions" on the issues discussed by the court. Don Padou and Abigail Padou, No. 10-AA-793, at 5. Further, § 1717.1 gives the Board the discretion to accept new information into the record after the close of a hearing. The Board may accept new information after the close of the hearing, so long as the opposing party has "due notice and an opportunity to rebut the information." 23 DCMR § 1717.1 (2008). The remand hearing satisfies this requirement. Therefore, the Protestants' objection is overruled. *Tr.*, 10/12/11 at 10-11.

Based on the decision rendered by the court, we reaffirm our prior rulings regarding appropriateness, ownership of the establishment, and compliance with § 25-314(b). We further address the issues raised by the court in this Order. As such, the Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and the documents comprising the Board's official file, makes the following:

### FINDINGS OF FACT

1. The Applicant's establishment is located at 3740 12th Street, N.E., Washington, D.C. *Alcoholic Beverage Regulation Administration (ABRA) Licensing File No. ABRA-083121*. D'mazana Lumukanda owns The New Brookland Cafe, LLC, t/a Brookland Café, and has applied for a new Retailer's Class CR License. See ABRA Licensing File No. ABRA-083121.

#### I. Clean Hands

2. Mr. Lumukanda submitted a Clean Hands Self Certification form issued by the Department of Consumer and Regulatory Affairs. *ABRA Protest File No. 09-081P, Applicant's Exhibit C*. Mr. Lumukanda signed the form and certified that he

does not owe more than one hundred dollars (\$100) in outstanding debt to the District of Columbia government as a result of: . . . Fines, penalties or interest assessed pursuant to the Litter Control Administration Act of 1985[,] . . . the Illegal Dumping Enforcement Act of 1994[, the Traffic Adjudication Act,] . . . the Department of Consumer and Regulatory Affairs (DCRA) Civil Infraction Act of 1985[,] Past Due Taxes owed to the Office of Tax and Revenue[, or] Past due District of Columbia Water and Sewer Authority service fees.

*Applicant's Exhibit C*. The Office of Tax and Revenue Compliance Administration Collection Division stamped the form on October 6, 2011. *Applicant's Exhibit C*. The stamp states the following: "CLEAN HANDS APPROVED." *Applicant's Exhibit C*.

3. The Applicant signed ABRA's Business Entity Clean Hands Certification, which, as of April 30, 2009, certifies that the Applicant "does not owe more than \$100.00 to the District of Columbia as a result of:

1. Fines, penalties or interest assessed pursuant to the Litter Control Administrative Act of 1985 . . . ;
2. Fines, penalties or interest assessed pursuant to the Illegal Dumping Enforcement Act of 1994 . . . ;
3. Fines, penalties or interest assessed pursuant to the Department of Consumer & Regulatory Affairs Civil Infraction Act of 1985 . . . ;
4. Past due taxes;
5. Past due District of Columbia Water and Sewer Authority Service Fees;
6. Parking fines or penalties assessed by other jurisdictions, provided, that a reciprocity agreement is in effect between the jurisdiction and the District;
7. Fines assessed to car dealers; and
8. Fines assessed pursuant to the Taxicab and Limousine Commission Establishment Amendment Act of 2004.

*ABRA Licensing File No. ABRA-083121, Clean Hands Certification.* The form contains a signature box for the Office of Tax and Revenue. *Clean Hands Certification.* The box contains the following stamp: “CLEAN HANDS APPROVED . . . APR 30 2009—OFFICE OF TAX AND REVENUE—Compliance Administration Collection Division.” *Clean Hands Certification.* The stamp contains the issuing officer’s written initials. *Clean Hands Certification.*

4. The Protestants submitted three Litter Control Administration Act Liens against Mr. Lumukanda, identified as Ticket Nos. PW-V-06-K125111, PW-V-06-K124950, and PW-V-06-K124949. *ABRA Protest File No. 09-081P, Protestants’ Exhibit No. 3, Applicant’s Exhibit B; Tr. 10/12/2011 at 80.* The liens are for the property described as “SQUARE 0302 . . . LOT 0841.” *Protestants’ Exhibit No. 3.* One lien is dated February 7, 2008, and the other two are dated June 19, 2008. *Protestants’ Exhibit No. 3.*

All three liens state the following:

This Lien is filed under the authority of and pursuant to D.C. Official Code § 8-807(f)(1). The District of Columbia shall have a continuing and perpetual lien for the amount stated against the property shown above and all property, whether real or personal, belonging to the person(s) named above. This lien shall have the same force and effect as a lien created by judgment and shall attach to all property belonging to the person(s) named above at any time during the period of the lien, including any property acquired by the person(s) named above after the lien arises . . . This lien remains in

force and effect until all amounts set forth above . . . shall be paid. **To satisfy this lien contact the Office of Administrative Hearings . . .**

*Protestants' Exhibit No. 3.*

5. Robert Farr, the Director of the Real Property Tax Administration, sent Mr. Lumukanda a letter, dated October 11, 2011, that states the following:

I . . . apologize to you . . . for any inconvenience . . . that . . . resulted from an error in transfer of ownership from 105 P Street, SW (Square 0599-Lot 0025) to 2223 12<sup>th</sup> Street, NW (SSL: 0302-0841). On September 7, 2004, you purchased property located at 105 P Street, SW, [sic] (SSL: 0599-0025) but the ownership was erroneously applied to 2223 12<sup>th</sup> Street, NW. [sic] (SSL: 0302-0841).

*ABRA Protest File No. 09-081P, Letter from Robert Farr, Director, Real Property Tax Administration, to D'Mazana Lumukanda (Oct. 11, 2011), Applicant's Exhibit A; Tr., 10/12/11 at 20.*

## **II. Character and Fitness**

6. Mr. Lumukanda previously worked as a consultant in the District of Columbia and opened a number of small businesses. The Brookland Cafe, LLC, Board Order No. 2010-370, ¶ 10. The District of Columbia Courts' website shows that Mr. Lumukanda paid a \$25.00 fine for possessing an open container of alcohol on February 2, 2011. *ABRA Protest File No. 09-081P, Protestants' Exhibit No. 4.*

## **III. Successive Applications**

7. ABRA's records indicate that Mr. Lumukanda applied for an ABC license on three separate dates: October 12, 2007, July 26, 2007; and April 21, 2009. *See ABRA Licensing File No. 77566; ABRA Licensing File No. 77985; ABRA Licensing File No. 81793; The Brookland Cafe, LLC, Board Order No. 2010-370, ¶ 19.*

8. On October 12, 2007, Splash Restaurant & Bar, LLC, t/a Splash, at premises 2222-2224 18th Street, N.W., ABRA License No. 77985, applied for a New Retailer's Class CR License. *See ABRA Licensing File No. 77985.* Mr. Lumukanda and Clarence Hatcher, Jr., are listed as managing members of Splash Restaurant & Bar, LLC. *ABRA Licensing File No. 77985, ABRA Application.*

9. Subsequently, on July 26, 2007, Splash Restaurant, LLC, t/a Splash, a separate corporation, at premises 2222-2224 18th Street, N.W., ABRA License No. 77566, applied for a new Retailer's Class CR License. *See ABRA Licensing File No. 77566.* Mr. Lumukanda and Derrick W. Brown are listed as managing members of Splash Restaurant, LLC. *ABRA Licensing File No. 77566, ABRA Application.*

10. ABRA's records indicate that Mr. Brown and Mr. Lumukanda had an internal dispute over control over the corporation and the lease at 2222-2224 18th Street, N.W. *ABRA Protest File No. 77985, Letter from D'Mazana Lukumanda to Peter B. Feather, Chairperson, Alcoholic Beverage Control Board* (Nov. 5, 2007). As such, the Board cancelled the October 2007 and July 2007 Applications "without prejudice" on December 12, 2007. *ABRA Protest File No. 77985, Letter from Cynthia W. Simms, Community Resource Officer, to D'Mazana V. Lumukanda* (Dec. 18, 2007).

11. On April 21, 2009, Mr. Lumukanda applied for a new Retailer's Class CT License for The New Brookland Café, LLC, t/a Brookland Café, at premises 3740 12th Street, N.E., ABRA License No. 81793. *See ABRA Licensing File No. 81793*. The Board dismissed the Application under § 25-314(b)(1), because the establishment's location fell within 400 feet of a school. *The Brookland Café, LLC, t/a Brookland Café, Board Order No. 2009-197 (D.C.A.B.C.B. Jul. 29, 2009)*. Nevertheless, the Board specifically stated that under D.C. Code § 25-338(b) the denial qualified as "purely technical or procedural" and Mr. Lumukanda could "apply for a license of the same class at any time." *Id.* at 3.

#### IV. Door

12. The establishment has a door that connects the establishment with the neighboring hotel. *Tr.*, 10/12/11 at 40, 71; *Tr.* March 3, 2010 at 25. Mr. Lumukanda has affixed a sign to the door that reads: "EMPLOYEE ENTRANCE AND EXIT—THIS DOOR IS EFFECTIVELY CLOSED TO BROOKLAND INN AND BROOKLAND CAFÉ CUSTOMERS—EMERGENCY EXIT." *Tr.*, 10/12/11 at 35; *ABRA Protest File No. 09-081P, Applicant's Exhibit D*. Mr. Lumukanda keeps the door unlocked for his employees and emergency purposes. *Tr.*, 10/12/11 at 35-36; *Tr.* 3/3/10 at 25. Mr. Lumukanda does not know whether the door must remain open for emergency purposes and has not obtained any guidance from the District of Columbia Fire Department. *Tr.*, 10/12/11 at 48-49.

### CONCLUSIONS OF LAW

13. We find that the Application satisfies §§ 25-301(b) and 25-301(a)(1), and is not barred by § 25-338. We further find that the Applicant conforms with § 25-761, so long as Mr. Lumukanda complies with the conditions outlined by the Board in its Order. For these reasons, we reaffirm our decision in Board Order No. 2010-370 and grant the Application.

#### I. Clean Hands

14. We find that the Applicant has satisfied D.C Official Code § 25-301(b).

Under § 25-301(b),

Notwithstanding § 47-2861(1)(B), the Board shall not issue a license or permit to an applicant if the applicant has failed to file required District tax returns or owes more than \$ 100 in outstanding debt to the District under [§ 47-2862(a)] . . .

D.C. Official Code § 25-301(b) (Supp. 2011).

Section 47-2862 of the District of Columbia Official Code states:

(a) Notwithstanding any other provision of law, the District government shall not issue or reissue a license or permit to any applicant for a license or permit if the applicant:

(1) Owes the District more than \$100 in outstanding fines, penalties, or interest assessed pursuant to the following acts or any regulations promulgated under the authority of the following acts, the:

(A) Litter Control Administrative Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code § 8-801 et seq.) [Chapter 8 of Title 8];

(B) Illegal Dumping Enforcement Act of 1994, effective May 20, 1994 (D.C. Law 10-117; D.C. Official Code § 8-901 et seq.) [Chapter 9 of Title 8];

(C) District of Columbia Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.01 et seq.) [Chapter 23 of Title 50];

(D) Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 et seq.) [Chapter 18 of Title 2];

(E) District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-301 et seq.) [subchapter I of Chapter 3 of Title 50]; or

(F) The Compulsory/No-Fault Motor Vehicle Insurance Act of 1982, effective September 18, 1982 (D.C. Law 4-155; D.C. Official Code § 31-2401 et seq.) [Chapter 24 of Title 31];

(2) Owes the District more than \$100 in past due taxes;

(3) Owes fines assessed to car dealers pursuant to section 2(i) of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 680; D.C. Official Code § 50-1501.02(i));

(4) Owes parking fines or penalties assessed by another jurisdiction; provided, that a reciprocity agreement is in effect between the jurisdiction and the District;

(5) Owes past due District of Columbia Water and Sewer Authority service charges or fees; or

(6) Owes a vehicle conveyance fee, as that term is defined in § 50-2302.01(i).

15. The evidence submitted by Mr. Lumukanda and the record prove that he satisfies § 25-301(b). Specifically, Mr. Lumukanda has properly self-certified that he does not owe more than \$100.00 in outstanding debt to the District of Columbia as a result of: the Litter Control Administration Act of 1985, the Illegal Dumping Enforcement Act of 1994, the Traffic Adjudication Act, the DCRA Civil Infraction Act of 1985, the Taxicab and Limousine Commission Establishment Amendment Act of 2004, fines assessed to car dealers, past due taxes to the Office of Tax and Revenue, or service fees to the District of Columbia Water and Sewer Authority. *Supra*, at ¶¶ 3-4; *see also* D.C. Code § 47-2863 (Supp. 2011) (noting that the clean hands requirement is “enforced by self-certification”).

16. Although the Protestants challenge the Applicant’s compliance with the Litter Control Administration Act, the liens submitted by the Protestants do not show that Mr. Lumukanda owes unpaid fines to the District of Columbia. Mr. Lumukanda does not own the property referenced by the liens. *Supra*, at ¶¶ 4-5. As such, he does not owe money to the District of Columbia under the Litter Control Administrative Act of 1985.<sup>1</sup> Therefore, we find that the Application satisfies § 25-301(b).

## II. Character and Fitness

17. We further find that Mr. Lumukanda “is of good character and generally fit for the responsibilities of licensure.” D.C. Official Code § 25-301(a)(1) (Supp. 2011). The Protestants assert that we should deny Mr. Lumukanda a license, because he paid a \$25.00 fine for possessing an open container of alcohol and unsubstantiated allegations of perjury during the licensing process. However, these facts do not support such a result. First, the character and fitness requirement is reserved for major offenses that reflect on an individual’s ability to operate an establishment that complies with the law. A single offense that leads to a \$25.00 fine does not qualify as a major offense or reflect on Mr. Lumukanda’s ability to operate an ABC licensed establishment; especially, when the circumstances and charges surrounding the fine have not been placed into the record. Second, we also disagree that the Applicant committed the crime of perjury at any time during the protest process. Under § 25-442, “A witness who shall willfully give false testimony in a proceeding or hearing before the Board shall be guilty of perjury.” We cannot find that Mr. Lumukanda committed perjury without substantial evidence that he intended to lie. As such, without more, the Protestants’ accusations are baseless.

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<sup>1</sup> Before the hearing, the ABRA’s Office of General Counsel (OGC) received information from the Office of the Chief Financial Officer (OCFO) on the status of the liens against Mr. Lumukanda. On October 31, 2011, OCFO, sent an email to the OGC confirming that liens have never been filed against Mr. Lumukanda. OCFO further confirmed that the liens were only in Mr. Lumukanda’s name, because his name was erroneously recorded as the owner of the property. We do not base our decision in this matter on this new information, because the record in this matter was closed before October 31, 2011, and contains sufficient evidence to grant the license.

### III. Successive Applications

18. The record further demonstrates that Mr. Lumukanda's Application is permitted under § 25-338. Section § 25-338 states:

(a) A second and each subsequent application for the same class of license for the same person or persons shall not be considered within 5 years of a denial.

(b) If an application is withdrawn for good cause, as determined by the Board, before the timely filing of a protest, or if the first application was denied for purely technical or procedural reasons, as determined by the Board, another application by the same applicant for a license of the same class at the same premises may be made at any time.

D.C. Code § 25-338 (Supp. 2011).

19. Section 25-338 does not bar the present Application. First, the Board dismissed the October 2007 and July 2007 Applications "without prejudice" based on Mr. Lumukanda and Mr. Brown's dispute over control of the establishment's property and the corporation itself. Supra, at ¶¶ 8-10. A dismissal without prejudice means that the Applicant is entitled to refile its Application. Black's Law Dictionary (9th ed. 2009) (see: dismissed without prejudice). Thus, we find that the Board dismissed the October 2007 and July 2007 Applications for technical reasons. Second, the Board specifically dismissed the April 2009 Application for "technical" and "procedural" grounds, with the intention of allowing the Applicant to apply again. Supra, at ¶ 11. Therefore, we find that the October 2007, July 2007, and April 2009 Applications do not bar the current Application under § 25-338.

### IV. Door

20. Finally, we find that the door connecting the establishment to the hotel is effectively closed under § 25-761, so long as the Applicant abides by the Board's conditions. Under § 25-761,

No license shall be issued for the sale or consumption of beverages in any building, a part of which is used as a dwelling or lodging house, unless the applicant files an affidavit stating to the satisfaction of the Board that access from the portion of the building used as a dwelling or lodging house to the portion where the applicant desires to sell alcoholic beverages is effectively closed . . .

D.C. Code § 25-761 (Supp. 2011). A door is effectively closed when neither an establishment's employees nor customers may use the door. Here, the sign posted by Mr. Lumukanda does not render the door dividing the hotel and the establishment effectively closed. Supra, at ¶ 12. In order to remedy this violation and ensure the appropriateness of the establishment, as a condition of licensure, the door must remain closed and locked at all times; except in the case of an emergency.

## V. Conclusion

21. For the foregoing reasons, we grant the Application. We further note that the Protestants have not raised any other issues related to § 25-301(b), or any other issue, under § 25-602 or 23 DCMR § 1601.8. As such, the Board is not required to make findings of fact related to any other matter. See Craig v. District of Columbia Alcoholic Beverage Control Bd., 721 A.2d 584, 590 (D.C. 1998) (“The Board's regulations require findings only on contested issues of fact.”); 23 DCMR § 1718.2 (2008). Therefore, based on our review of the agency’s files, the Application, the credibility of Mr. Lumukanda, and the record in this matter, we find that Mr. Lumukanda and the Application comply with § 25-301(b), Title 25 of the District of Columbia Official Code, and Title 23 of the District of Columbia Municipal Regulations.

## ORDER

Therefore, it is hereby **ORDERED** on this 9th day of November 2011, that the Application for a new Retailer’s Class CR License filed by The Brookland Cafe, LLC, t/a Brookland Cafe, at premises 3740 12th Street, N.E., Washington, D.C., is hereby **GRANTED**, subject to the following conditions:

- (1) the door connecting the Applicant’s establishment to the hotel shall remain closed and locked at all times; except in the case of an emergency that threatens the health, safety, and welfare of the establishment’s patrons and employees, including, but not limited to, fire, flood, natural disaster, and violent criminal activity; and
- (2) Board Order No. 2010-370 shall remain in full force and effect.

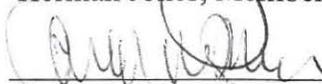
Board Order No. 2011-446, which ordered the Applicant to cease and desist selling and serving alcoholic beverages, is **VACATED**. Copies of this Order shall be sent to the Applicant and the Protestants.

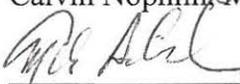
District of Columbia  
Alcoholic Beverage Control Board

  
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Nick Alberti, Interim Chairperson

  
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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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Michael Silverstein, 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).