

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

In the Matter of:

E and K, Inc.
t/a Champions Kitchen

Application for a Substantial Change to a
Retailer's Class CR License

at premises
7730 Georgia Avenue, N.W.
Washington, D.C. 20012

Case No.: N/A
License No.: 103055
Order No.: 2018-688

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Bobby Cato, Member

PARTIES: E and K, Inc., t/a Champions Kitchen, Applicant

Andrew Kline, Counsel, on behalf of the Applicant

Mark Pattison, President, Shepard Park Citizens Association (SPCA),
Intervenor

**ORDER INTERPRETING SETTLEMENT AGREEMENT AND GRANTING
INTERVENOR STATUS TO THE SPCA**

The Alcoholic Beverage Control Board affirms the denial of the Application for a Substantial Change filed by E and K, Inc., t/a Champions Kitchen, (Champions), which requested that the Board permit it to expand the occupancy of its premises to 89 persons based on the terms of its settlement agreement.

Recently, Champions has attempted to file an application to expand the occupancy of its premises to 89 persons. *Applicant's Motion*, at 1-2. Nevertheless, upon receipt of this application, the Licensing Department of the Alcoholic Beverage Regulation Administration informed Champions that the settlement agreement did not permit the proposed change. *Id.* at 2. The position of the Licensing Department stems from the settlement agreement entered into between Champions and the Shepard Park Citizens Association (SPCA), which was approved by the Board on February 1, 2017. *In re E and K, Inc., t/a Champions Kitchen*, Case No. 16-PRO-00101, Board Order No. 2017-056 (D.C.A.B.C.B. Feb. 1, 2017). On August 28, 2018, Champions requested that the Board

interpret the settlement agreement to allow the establishment to file for a substantial change. *Id.*

Because Champions asks the Board to interpret the settlement agreement and impact the rights of the SPCA, the request must be deemed a contested case pursuant to 23 DCMR § 903.1. As a signatory to the agreement, fundamental fairness requires that the SPCA be recognized as an interested party and be permitted to participate in the matter as an intervenor pursuant to 23 DCMR § 1701.4.

In its motion, Champions objects to the determination that the settlement agreement prevents it from applying to expand its occupancy. *Applicant's Mot.*, at 1. In support of this contention, Champions argues that this statement is merely descriptive and not binding. *Id.* at 2. Champions further alleges that the parties had an agreement to revise the number once it obtained a final Certificate of Occupancy for the premises, but that the SPCA currently refuses to voluntarily amend the agreement. *Id.* at 2.

In reply, on the matter of Champions' request, the SPCA argues that the specific provision at issue is binding as to the matter of occupancy, and that no future agreement to amend the occupancy was made. *Letter from Naima Jefferson, President, SPCA to the Alcoholic Beverage Control Board*, 1-3 (Nov. 5, 2018).

The Board is not persuaded by Champions' motion, and finds that the plain language of the agreement limits the establishment to an occupancy of 44 persons.

Under § 1 of the agreement, "The establishment has a capacity of 44 patrons." *Id.* at *Settlement Agreement*, at ¶ 1. This provision is not included in the recitals, but rather, is located in the operative portion of the agreement after the statement: ". . . Champions Kitchen and SPCA, both intending to be bound hereby, enter into this Agreement as follows." *Id.* at *Settlement Agreement*, at 1.

Under § 25-446(a), "The applicant and any protestant may, at any time, negotiate a settlement and enter into a written settlement agreement setting forth the terms of the settlement." D.C. Code § 25-446(a). Section 25-446.01(9) indicates that provisions restricting the "utilization of floors, occupancy, and the number of seats" are enforceable terms of a settlement agreement. D.C. Code § 25-446.01(9). Once agreed upon, a settlement agreement must be approved by the Board before it may go into effect. D.C. Code § 25-446(b)(1). If approved, the agreement is made part of the license and becomes enforceable by the Board. D.C. Code § 25-446(c). Nevertheless, § 25-446(b)(3) provides that "A settlement agreement not approved by the Board shall not be enforced by ABRA or the Board." D.C. Code § 25-446(b)(3).

Previously, the Board has noted that a settlement agreement ". . . is akin to a contract; therefore, the Board relies on principles of contract law to interpret it. *In re Daci Enterprises, LLC, t/a Dacha Beer Garden*, ABRA License No. 092773, Board Order No. 2015-376 (D.C.A.B.C.B. Aug. 5, 2015). "Accordingly, the Board generally construes a settlement agreement 'within its four corners and generally . . . enforce[s] it as written.'" *Id.* citing *Prince Const. Co., Inc. v. District of Columbia Contract Appeals Bd.*, 892 A.2d 380, 385 (D.C. 2006).

In this case, the parties included the statement regarding occupancy in the operative portion of the agreement. Had the parties intended that the statements regarding the nature of the establishment be solely descriptive, they could have placed them in the recital portion of the agreement. But they did not.

Instead of being descriptive, the term is a material part of the agreement. As noted by § 25-446.09, the Board will enforce terms related to occupancy, and the issue of occupancy has a direct relationship to the appropriateness issue of peace, order, and quiet and parking needs. D.C. Official Code § 25-313(b)(2)-(3). Moreover, if the provision were changed to be deemed nonbinding, there is no guarantee that the SPCA would have entered into the agreement in the first place. Indeed, if the Board were to approve an increase in occupancy, despite the language of the settlement agreement, this would render the statement regarding occupancy in the agreement false and nullify a specific term of the agreement. *N. Lincoln Park Neighborhood Ass'n, v. D.C. Alcoholic Beverage Control Bd.*, 727 A.2d 872, 875 (D.C. 1999) (“Once entered, the agreement between the parties becomes the law of the case, and its terms may not be enlarged or diminished by the court, for to do so would be to create a new stipulation to which the parties have not agreed.”).

Finally, the alleged agreement to later amend the settlement agreement to reflect the occupancy on Champions’ future Certificate of Occupancy is not enforceable by the Board pursuant to § 25-446(b)(3). Under § 25-446(b)(3), the Board may only enforce agreements that have been reduced to writing and approved by the Board. Here, the alleged agreement is not contained or inferred by the language of the settlement agreement. There is also no indication in the record that any party made the Board aware that there was an outside agreement impacting the interpretation of the settlement agreement, or that the agreement was anything but final and complete at the time of Board approval. As a result, even if true, the Board has no authority to enforce the alleged side agreement made by the parties.

Therefore, the Board finds that the plain language of the settlement agreement limits the premises to 44 persons.

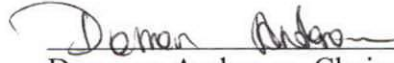
ORDER

For these reasons, the Board, on this 7th day of November 2018, **DENIES** the motion filed by Champions and **AFFIRMS** the denial of the application.

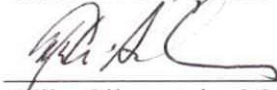
IT IS FURTHER ORDERED, pursuant to 23 DCMR § 1701.5, that the SPCA is granted the status of an intervenor in this matter solely to address the issue of the interpretation of the settlement agreement. The SPCA is advised that the right to intervene does not automatically grant it standing to protest any future application filed by Champions; therefore, the SPCA should ensure that it follows the appropriate protest procedures if the opportunity to protest arises and it seeks to do so.

Copies of this Order shall be sent to the Applicant.

District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Nick Alberti, Member


Mike Silverstein, Member


James Short, Member


Bobby Cato, 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).