

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

**In the Matter of:**

1624 U Street, Inc.  
t/a Chi-Cha Lounge

Application for Renewal of a  
Retailer's Class CT License

at premises  
1624 U Street, N.W.  
Washington, D.C. 20009

)  
)  
) License No.: 026519  
) Case No.: 10-PRO-00156  
) Order No.: 2011-214

BEFORE: Charles Brodsky, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member

ALSO PRESENT: 1624 U Street, Inc., t/a Chi-Cha Lounge, Applicant  
  
Emanuel Mpras, Esq., on behalf of the Applicant  
  
Joseph Masullo, Abutting Property Owner, Protestant  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

1624 U Street, Inc., t/a Chi-Cha Lounge (Applicant), filed an Application to renew its Retailer's Class CT License located at premises 1624 U Street, N.W., Washington, D.C. A timely protest was filed by Joseph Masullo, an Abutting Property Owner (Protestant), on November 15, 2010. The Application came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 29, 2010, and a Status Hearing on January 12, 2011. The Protest Hearing was held on February 23, 2011.

The Parties were unsuccessful in negotiating a Voluntary Agreement before the Protest Hearing.

Pursuant to D.C. Official Code § 25-602(a) (2001), the protest issues are whether the renewal of the license will adversely impact the peace, order, and quiet of the neighborhood.

At the conclusion of the Protest Hearing, the Board took the matter under advisement. The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following:

### FINDINGS OF FACT

1. The Applicant filed an Application to renew its Retailer's Class CT License. *See ABRA Licensing File No. 026519, ABRA Protest File No. 10-PRO-00156.*
2. The Applicant's establishment is located at 1624 U Street, N.W. *ABRA Protest File No. 10-PRO-00156, Protest Report, 2.* It is located in a C-2-A zone. *Protest Report, 2.* There are 21 ABC-licensed establishments located within 1200 feet of the establishment. *Protest Report, 3.* There are no other schools, recreation centers, public libraries, or day care centers within 400 feet of the Applicant. *Protest Report, 4.*
3. The establishment's entrance is covered by a red awning. *Transcript (Tr.), February 23, 2011 at 17.* The establishment provides a "lounge-style" environment and offers both DJs and live entertainment. *Tr., 2/23/11 at 18, 29.* The establishment occupies the first floor and restrooms are located in the building's basement. *Tr., 2/23/11 at 18.* A large bar is located on the right side of the establishment. *Tr., 2/23/11 at 18.* The establishment has a large main room and two smaller rooms. *Tr., 2/23/11 at 18.* The small room at the back of the establishment is only utilized by the Applicant on the weekends and can only accommodate up to 20 patrons. *Tr., 2/23/11 at 18, 53, 84.*
4. Joseph Masullo's apartment is located above the back left corner of the Applicant's establishment. *Tr., 2/23/11 at 28.* His residence is partly above the establishment's kitchen and the small room in the back of the establishment. *Tr., 2/23/11 at 128.*
5. ABRA investigators monitored the Applicant on ten separate occasions between January 14, 2011 and February 13, 2011. *Tr., 2/23/11 at 22.* ABRA investigators did not observe any loitering, excessive noise, or other ABC violations. *Tr., 2/23/11 at 22.*
6. The Metropolitan Police Department (MPD) has received six calls for service at the Applicant's address since February 25, 2010. *Tr., 2/23/2011 at 8.* On August 5, 2010, August 14, 2010, and September 5, 2010, there were three calls for service for burglary alarms. *Tr., 2/23/2011 at 8.* On November 1, 2010, MPD responded to a traffic complaint near the Applicant's address. *Tr., 2/23/2011 at 8.* On May 12, 2010, MPD responded to a complaint

regarding loud noise at the establishment. *Tr.*, 2/23/2011 at 8. Lastly, on December 13, 2010, MPD received a call for service regarding loud noise coming from the street. *Tr.*, 2/23/2011 at 8. None of the complaints resulted in further police action. *Tr.*, 2/23/2011 at 10.

7. In the past four years, the Applicant has committed four secondary-tier violations. On February 27, 2007, the Applicant failed to submit its quarterly report and did not post a pregnancy warning sign, which resulted in a \$500.00 fine being levied against the Applicant. *Protest Report*, 9. On June 9, 2008, the Applicant violated its Voluntary Agreement, which resulted in a \$250.00 fine and two stayed suspension days being levied by the Board. *Protest Report*, 8. On May 4, 2009, the Applicant failed to submit its quarterly report and was fined \$500.00 by the Board. *Protest Report*, 8. Finally, the Applicant is alleged to have violated its Voluntary Agreement on September 8, 2010; however, a resolution to this matter is still pending. *Protest Report*, 8.

8. Mr. Masullo and the Applicant entered into mediation as part of a civil suit filed by Mr. Masullo against the establishment in August 2008. *Tr.*, 2/23/11 at 96, 99, 163, 165. The mediation resulted in the establishment agreeing to hire a sound consultant of Mr. Masullo's choice to provide sound proofing recommendations for the establishment and Mr. Masullo's residence. *Tr.*, 2/23/11 at 98-99. As part of the settlement, the Applicant also paid Mr. Masullo's attorney fees and agreed to soundproof a wall in Mr. Masullo's residence. *Tr.*, 2/23/11 at 102.

9. Hush Acoustics, LLC, was hired to perform the sound analysis in accordance with the mediation agreement. *Tr.*, 2/23/11 at 99; *Applicant's Exhibit No. 1*. Farees Salim, an employee of the Applicant, attended the sound test performed in Mr. Masullo's residence. *Tr.*, 2/23/11 at 136. Mr. Salim heard noise made by the establishment's customers in Mr. Masullo's residence. *Tr.*, 2/23/11 at 136. Tim Schoeb was also present in the Applicant's establishment during the sound test and observed that during the sound test one of the speakers was not generating music; however, as indicated by Brenna Falk, the Applicant's attorney, the speaker was in fact broken. *Tr.*, 2/23/11 at 140, 150-51, 200. The Board further notes that the speaker was located in the small back room that no longer contains the establishment's speakers. *Tr.*, 2/23/11 at 151.

10. The establishment, at the recommendation of Hush Acoustics, LLC, installed gypsum board on "any wall that abutted [Mr.] Masullo's apartment . . ." and "the back half of the bar area ceiling." *Tr.*, 2/23/11 at 100. Further, as part of the agreement, the establishment installed a sound limiter, which was set at 82 decibels, in agreement with Mr. Masullo. *Tr.*, 2/23/11 at 99.

11. The Board notes that Mr. Masullo and the Applicant did not perform all of the recommendations suggested by the sound consultant, Hush Acoustics, LLC. *Tr.*, 2/23/11 at 108. As indicated by Ms. Falk, when the establishment sent workers to Mr. Masullo's residence to complete the work, Mr. Masullo's mother prevented them from doing the work needed to soundproof the laundry closet wall. *Tr.*, 2/23/11 at 102, 118, 202.

12. Michael S. Reed was contracted by the Applicant in order to soundproof the establishment. *Tr.*, 2/23/11 at 44-45. Mr. Reed installs audio-visual systems in residences and commercial spaces. *Tr.*, 2/23/11 at 44. His knowledge of soundproofing is solely based on six years of experience and attending relevant industry conferences. *Tr.*, 2/23/11 at 48, 50.

13. Mr. Reed soundproofed a “a number of cavities in the . . . left rear corner of the building in order to mitigate sound transfer to the residential units in the building.” *Tr.*, 2/23/11 at 44. He did this by filling up the cavities with denim and rubber membrane insulation and coating any areas between the establishment and Mr. Masullo’s residence with the same materials. *Tr.*, 2/23/11 at 58. The establishment also applied special glue that seals cracks and prevents sound transmission. *Tr.*, 2/23/11 at 75. In addition, the establishment installed vinyl tiles and gypsum board in the small room in the back of the establishment. *Tr.*, 2/23/11 at 75, 88

14. Mr. Reed also upgraded the establishment’s sound system. *Tr.*, 2/23/11 at 45; *Applicant’s Exhibit No. 3*. The establishment removed all of the speakers from the small room in the back of the establishment as well. *Tr.*, 2/23/11 at 132. Additionally, the establishment aimed its speakers away from Mr. Masullo’s apartment. *Tr.*, 2/23/11 at 132. The establishment also installed a sound limiter. The software that comes with the sound limiter only allows the Applicant’s management or Mr. Reed to change the maximum decibel level. *Tr.*, 2/23/11 at 45. The sound limiter currently does not allow the music to be played above 78 decibels, which is where the music is loudest in the restaurant. *Tr.*, 2/23/11 at 52, 61.

15. As indicated by Zair Al-Azzam, the establishment’s former general manger, the establishment tests the sound being generated by the sound system every night on an hourly basis by using a sound meter and logging the results until 2:00 a.m., when the music ceases. *Tr.*, 2/23/11 at 67-68, 82, 133.

16. Mr. Reed was also hired to conduct additional soundproofing after a portion of the soundproofing was punctured when the establishment installed new lighting fixtures. *Tr.*, 2/23/11 at 101. Mr. Reed soundproofed all of the air conditioning vents in the establishment. *Tr.*, 2/23/11 at 111.

17. Before soundproofing the establishment, Mr. Reed only entered Mr. Masullo’s apartment on one occasion. *Tr.*, 2/23/11 at 50. Mr. Reed was not invited back into Mr. Masullo’s apartment after he completed his soundproofing project at the establishment. *Tr.*, 2/23/11 at 65.

18. Mr. Masullo was unaware that noise from the establishment could be heard in his condominium unit when he first moved into the building. *Tr.*, 2/23/11 at 170, 198. However, when Mr. Masullo moved into his condominium unit in May 2008, he received a booklet from

the seller documenting hundreds of complaints to the police and ABRA regarding noise at the establishment. *Tr.*, 2/23/11 at 161.

19. Mr. Masullo currently hears noise and music from the Applicant's establishment in his condominium. *Tr.*, 2/23/11 at 164, 192. As indicated in Mr. Masullo's testimony, the soundproofing performed by the Applicant reduced the noise to "an acceptable level" for three to four weeks. *Tr.*, 2/23/11 at 170.

20. Mr. Masullo stated that most of the noise he hears from the establishment emanates from his kitchen and is so loud that he can identify the lyrics of the music played by the establishment. *Tr.*, 2/23/11 at 164, 192. Noise can also be heard in Mr. Masullo's bedroom even though he soundproofed that room. *Tr.*, 2/23/11 at 176. Finally, Mr. Masullo hears voices from the establishment in his bathroom. *Tr.*, 2/23/11 at 185.

21. Tim Schoeb has entered Mr. Masullo's residence in the evening on several occasions. *Tr.*, 2/23/11 at 141. During his visits, Mr. Schoeb clearly heard the conversations of the Applicant's customers in Mr. Masullo's bathroom. *Tr.*, 2/23/11 at 142. Mr. Schoeb has also heard noise from the Applicant's music and customers in Mr. Masullo's living room. *Tr.*, 2/23/11 at 142. In addition, he has heard pots and pans clanging in the establishment's kitchen from Mr. Masullo's deck. *Tr.*, 2/23/11 at 143. Further, he also heard the establishment's music in the hallway outside Mr. Masullo's apartment. *Tr.*, 2/23/11 at 159. The Board notes that Mr. Schoeb heard these sounds long after the Applicant finished soundproofing the establishment and described the sound as "low background music." *Tr.*, 2/23/11 at 144-45.

22. Mr. Masullo has spent \$2,600.00 soundproofing his property; however, noise generated by the Applicant is still audible in his condominium. *Tr.*, 2/23/11 at 175.

23. The Board incorporates the terms of the Applicant's voluntary agreements, dated February 24, 2006, and May 21, 2009, into the Board's findings of fact. *See generally* 1624 U Street, Inc., t/a Chi-Cha Lounge, Board Order No. 2006-017 (D.C.A.B.C.B. Mar. 8, 2009); 1624 U Street, Inc., t/a Chi-Cha Lounge, Board Order No. 2009-164 (D.C.A.B.C.B. Jun. 24, 2009).

### CONCLUSIONS OF LAW

24. Pursuant to D.C. Official Code § 25-313(a) (2001) and 23 DCMR § 400.1(a) (2008), an Applicant must demonstrate to the Board's satisfaction that the establishment's Application to renew a Retailer's Class CT License is appropriate for the neighborhood in which it is located. The Protestant challenged the Application on the grounds that it would adversely impact peace, order, and quiet of the neighborhood. The Board finds that the Application is appropriate.

25. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (Supp. 2010) and D.C. Official Code § 25-609 (2001), an ANC's properly adopted written recommendations are entitled to great weight from the Board. *See Foggy Bottom Ass'n v. District of Columbia ABC Bd.*, 445 A.2d 643 (D.C. 1982). Accordingly, the Board "must elaborate, with precision,

its response to the ANC issues and concerns.” Foggy Bottom Ass’n, 445 A.2d at 646. Here, no ANC submitted a recommendation at least seven days before the Protest Hearing under § 25-609 and therefore, the great weight requirement is inapplicable in this matter.

26. The Board finds that renewing the Application will not adversely impact the peace, order, and quiet of the neighborhood because the noise experienced by Mr. Masullo is not prohibited by the ABC laws and the Applicant already has a Voluntary Agreement that addresses noise.

27. The evidence presented to the Board demonstrates that the Applicant is compliant with D.C. Code § 25-725.

28. The ABC laws of the District of Columbia state that “The licensee under an on-premises retailer’s license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment” except if the premises are located “within a C-1, C-2, C-3, C-4, C-M, or M zone, as defined in the zoning regulations for the District.” D.C. Code § 25-725(a), (b)(3) (2001). In addition, “licensees . . . shall comply with the noise level requirements set forth in Chapter 27 of Title 20 of the District of Columbia Municipal Regulations.” § 25-725(c). In commercial zones, the maximum noise level that may be caused by a licensee is 60 dB(A) at night. 20 DCMR § 2701.1 (Supp. 2011).

29. Here, the facts show that Mr. Masullo and the Applicant are located in a C-2-A zone. Supra, at para. 2. Based on this fact, the noise heard by Mr. Masullo in his condominium falls under the exception to the noise prohibition found in § 25-725(b)(3), which carves out properties located in commercial zones from the prohibition. § 25-725(a), (b)(3). The Board was also not presented with any evidence that the noise heard in Mr. Masullo’s apartment exceeds the 60 dB(A) limit set by § 2701.1. As such, the noise heard by the Protestants does not violate § 25-725.

30. The Board also notes that the Applicant is not at risk of violating the District of Columbia’s new disorderly conduct law, which is an ABC violation under D.C. Code § 25-823(2) (Supp. 2011).

31. The new law states: “It is unlawful for a person to make an unreasonably loud noise between 10:00 p.m. and 7:00 a.m. that is likely to annoy or disturb one or more other persons in their residences.” D.C. Code § 22-1321(d) (Supp. 2011). In the Board’s view, noise generated by an establishment cannot be “unreasonable” if a licensee has taken commercially reasonable steps to soundproof its establishment and is not otherwise in violation of the District of Columbia’s noise laws.

32. There is no evidence that the noise created by the Applicant is unreasonable. The Applicant has made extensive efforts to soundproof the establishment. The facts demonstrate that the Applicant has attempted to comply with the soundproofing recommendations developed by Mr. Masullo’s sound consultant during the parties’ mediation; however, the Applicant’s efforts to soundproof Mr. Masullo’s condominium were blocked by Mr. Masullo’s mother.

Supra, at 9-16. As a result, the Board finds that the Applicant's operations do not create a risk of disorderly conduct, because the Applicant has taken commercially reasonable steps to soundproof its premises and, as indicated above, is not producing noise in violation of any of the District of Columbia's noise laws.

33. Finally, the Board sees no reason to deny the Application or alter the conditions of the Applicant's license because of any previous or future voluntary agreement violations. As a matter of law, the Board must treat voluntary agreements like contracts and respect the terms agreed upon by the parties. As such, the Board must not "enlarge[] or diminish[]" the terms of a voluntary agreement nor "create . . . new stipulation[s] to which the parties have not agreed" unless the Board is imposing conditions that are in the "best interest of the locality" under § 25-104. North Lincoln Park Neighborhood Ass'n v. Alcoholic Beverage Control Bd., 727 A.2d 872, 875 (D.C. 1999) citing Goozh v. Capitol Souvenir Co., 462 A.2d 1140, 1142 (D.C. 1983); D.C. Code § 25-104 (2001).

34. The Board will utilize the regular enforcement process to ensure the Applicant's compliance with its voluntary agreements. In this case, the Board notes that but for the voluntary agreements, the noise generated by the establishment would not be in violation of any ABC law. Consequently, if the Board imposes new requirements on the Applicant, this would result in the Board enlarging the terms of the parties' agreement without an adequate basis under § 25-104. In addition, the Board also finds that it is inappropriate to deny the Application because this would result in the closure of the Applicant's business when the Applicant only has four prior secondary tier violations in the past four years. Supra, at 7; *see also* D.C. Code § 25-830 (2001). As such, because there is no risk of additional ABC violations outside of the previously agreed upon voluntary agreements, the Board will rely on the enforcement process to deal with any future violations of the voluntary agreements.

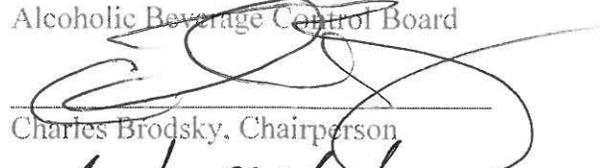
35. Consequently, the Board finds that renewing the Applicant's Retailer's Class CT License will not adversely impact the peace, order, and quiet of the neighborhood. The Board notes that this decision does not alter the voluntary agreements executed by the Applicant. As a result, the Protestant still has the right to report to ABRA if he observes any violations of the voluntary agreements in the future.

36. On a final note, the Board emphasizes that this decision is solely based on the Board's interpretation of Title 25 of the District of Columbia Code and Title 23 of the District of Columbia Municipal Regulations, which comprise the alcoholic beverage control laws of the District of Columbia. The Board does not have the power to enforce a mediation agreement that is not an approved voluntary agreement under D.C. Code § 25-446 (Supp. 2011). Consequently, nothing in this decision should be seen as commenting on the merits of any of the other claims the parties may have against one another in any other forum.

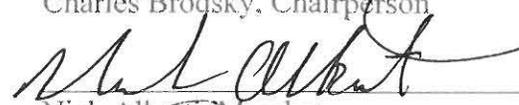
**ORDER**

Therefore, this 25th day of May 2011, it is hereby **ORDERED** that the Renewal Application of the Retailer's Class CT License filed by 1624 U Street, Inc., t/a Chi-Cha Lounge, at premises 1624 U Street, N.W., Washington, D.C., is hereby **GRANTED**. Copies of this Order shall be sent to the Applicant and the Protestant.

District of Columbia  
Alcoholic Beverage Control Board



Charles Brodsky, Chairperson



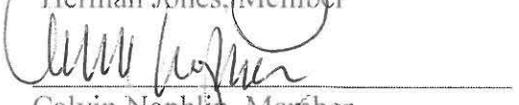
Nick Alberti, Member



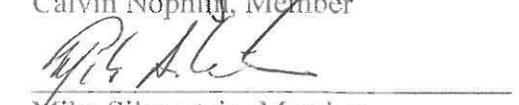
Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (2008), 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, 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 (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).