
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

The Alcoholic Beverage Control Board (Board) renews the Retailer's Class CT License held by Caribbean Vibes, Inc., t/a Club Timehri (hereinafter "Club Timehri" or "Applicant") and finds good cause to amend the Settlement Agreement attached to the license as follows:

- 1) Club Timehri is permitted to apply for and obtain full legal hours.
- 2) Club Timehri is no longer required to attend mandatory meetings with the Advisory Neighborhood Commission (ANC) or any other community organization.
- 3) Club Timehri will not be subject to any security provisions contained in the Settlement Agreement.

The Board's finds that these minor amendments, made in accordance with this Order, will not have a negative impact on the Adams Morgan neighborhood. The Board's reasoning and changes are described below.

Procedural Background

Club Timehri filed a timely Application to Renew a Retailer's Class CT License (Application) requesting that the Board renew its license.

Club Timehri also filed a timely Petition to Terminate a Settlement Agreement (Petition) requesting that the Board terminate its Settlement Agreement, dated June 9, 2004, entered into with Advisory Neighborhood Commission (ANC) 1C and Kalorama Citizens Association (KCA). *In re Caribbean Vibes, Inc., t/a Club Timehri*, Case No. 29514-0/022P, Board Order No. 2005-68, 1-3 (D.C.A.B.C.B. Apr. 27, 2005) (Order on Voluntary Agreement and Withdrawn Protest).

A. Procedural Background Related to the Renewal Application

On October 11, 2013, the Alcoholic Beverage Regulation Administration (ABRA) provided public notice of the Application to renew the license. *Public Notice 13-PRO-00173* (Oct. 11, 2013). The notice indicated that the last day to object to the renewal of the license was November 25, 2013. *Id.* On or before November 25, 2013, the Board received timely objection from ANC 1C, *ABRA Protest File 13-PRO-00173*, Letter from Brian Hart, former ANC 1C Commissioner, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control (ABC) Board, 1 (Nov. 25, 2013). Objection from KCA, *ABRA Protest File 13-PRO-00173*, Letter from Denis James, President, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control (ABC) Board, 1 (Nov. 25,

2013). Lastly, objection from RCNA, *ABRA Protest File 13-PRO-00173*, Letter from Benedicte Aubrun, At-Large and Liaison for ABC Matters, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control (ABC) Board, 1-2 (Nov. 24, 2013).

The parties came before the Board's Agent for a Roll Call Hearing on December 9, 2013 and the Protestants were granted standing to protest the Application. The parties then came before the Board for a Protest Status Hearing on March 12, 2014.

B. Procedural Background Related to Petition to Terminate

The Board reviewed the Petition and found that the Petition satisfied D.C. Official Code § 25-446(d)(2) because it was filed during the Petitioner's renewal period and after four years from the date the Board originally approved the Settlement Agreement at issue in this matter. The Petition also contained the affidavit required by § 25-446(d)(5). The Alcoholic Beverage Regulation Administration (ABRA) then provided notice to the parties to the Settlement Agreement and to the public in accordance with District of Columbia (D.C.) Official Code § 25-446(d)(3).

ABRA provided public notice of the Petition on June 13, 2014. Notice of Public Hearing 14-PRO-00057 (June 13, 2014). The notice indicated that the last day to file objections against the Petition was July 28, 2014. *Id.* Subsequently, a protest against the Petition was timely filed by ANC 1C, *ABRA Protest File 14-PRO-00057*, Letter from Brian Hart, former ANC 1C Commissioner, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control (ABC) Board, 1-2 (Jul. 22, 2014). Also, a protest from KCA, *ABRA Protest File 14-PRO-00057*, Letter from Denis James, President, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control (ABC) Board, 1 (Jul. 28, 2014). Lastly, a protest from RCNA, *ABRA Protest File 14-PRO-00057*, Letter from Benedicte Aubrun, At-Large and Liaison for ABC Matters, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control (ABC) Board, 1 (Jul. 25, 2013).

The parties came before the Board's Agent for a Roll Call Hearing on August 11, 2014 and the Protestants were granted standing to protest the Petition. The parties then came before the Board for a Protest Status Hearing on October 1, 2014.

Based on the similarity of the facts and legal issues surrounding the Application and Petition, the Board consolidated the matters into a single Protest Hearing.

The Protest Hearing in this matter occurred on November 19, 2014, where the parties argued their respective cases.

C. The Issues Under Consideration

There are two issues that must be addressed by the Board in this Order. First, based on the Protestants' initial protest letters, listed above, the Board may only grant the Application to Renew if the Board finds that the request will not have a negative impact on peace, order, and quiet within 1,200 feet of the establishment. D.C. Official Code §§ 25-446(d)(4), 25-602.

Second, the Board must determine whether the Applicant's Settlement Agreement merits termination in accordance with D.C. Official Code § 25-446.

FINDINGS OF FACT

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:

I. Background

1. Club Timehri has held a Retailer's Class CT License at 2439 18th Street N.W., Washington, D.C., since 2007. At the time of the transfer of the license to the Applicant, the license had a Settlement Agreement attached to it, which was approved by the Board on April 27, 2005. In re Caribbean Vibes, Inc., t/a Club Timehri, Board Order No. 2005-68, 1-3. The settlement agreement is now between the Applicant, ANC 1C and KCA.
2. The Applicant's hours of operation and sales, service and consumption of alcoholic beverages are Sunday through Thursday 8:00 p.m. to 2:00 a.m. and Friday and Saturday 8:00 p.m. to 3:00 a.m. *Licensing File No. ABRA-077730*
3. The Applicant also has an Entertainment Endorsement which was approved by the Board on June 9, 2010. The Entertainment Endorsement hours are Sunday through Thursday 9:00 p.m. to 1:45 a.m. and Friday and Saturday 9:00 p.m. to 2:45 a.m. *Licensing File No. ABRA-077730*. The Entertainment Endorsement does not allow for dancing or a cover charge. *Licensing File No. ABRA-077730*.

II. Testimony of ABRA Investigator Mark Brashears

4. ABRA Investigator Mark Brashears prepared the Protest Report related to this matter and investigated the Application and the Petition. *Transcript (Tr.)*, Nov. 19, 2014 at 96. He is a former special agent with the Air Force Office of Special Investigations. *Tr.* 11/19/14 at 111.
5. The renewal application was protested by the Advisory Neighborhood Commission (ANC) 1 C, represented by William Simpson, Chair; the Kalorama Citizens Association (KCA), represented by Denis James, President; and The Reed-Cooke Neighborhood Association (RCNA), represented by Benedict Auburn, President. *Tr.* 11/19/14 at 97. There are 63 ABC-licensed establishments located within 1200 feet of the establishment. *Tr.* 11/19/14 at 98. No schools, public libraries, or daycare centers are located within 400 feet of the establishment. *Tr.* 11/19/14 at 98.
6. ABRA Investigators monitored the establishment 20 separate times between March 6, 2014, through May 31, 2014. *Tr.* 11/19/14 at 101, 109-110; *Protest Report*, at 9-10. Investigators found no violations during the observation period. *Tr.*, 11/19/14 at 101, 112-113. On Saturday, May 31, 2014, Investigator Brashears conducted a regulatory inspection and found there were no violations. *Tr.* 11/19/14 at 101. There was an ABC Manager on duty who was knowledgeable

and helpful during the inspection. *Tr.* 11/19/14 at 101. He never observed any patron dancing during the 20 protest monitoring visits. *Tr.* 11/19/14 at 118-119.

7. The joint ABRA/DCRA/MPD Noise Task Force has not received any complaints, nor have they been requested to monitor the establishment due to noise issues. *Tr.* 11/19/14 at 102, 105, 113. Investigator Brashears has never had to caution the establishment to address noise issues nor has he had to tell them to close their windows or doors to prevent noise emanating from the establishment. *Tr.* 11/19/14 at 105. He has never noticed any problems with litter or rodents. *Tr.* 11/19/14 at 105-106.

8. There have been two incidents in the last two years. *Tr.* 11/19/14 at 102. One incident involved a missing placard that had been removed from the establishment. *Tr.* 11/19/14 at 102. The Applicant received a written warning for that violation. *Tr.* 11/19/14 at 102. The establishment was also found in violation of charging a cover charge without first obtaining an Entertainment Endorsement in 2010. *Tr.* 11/19/14 at 117-118.

9. In March 2012, the establishment had a number of security measures placed on the license and the licensee was required to submit a Security Plan. *Tr.* 11/19/14 at 119-121. One of the security measures is the employment of an individual who check identification at the front door. *Tr.* 11/19/14 at 124. Security personnel wears security attire and they regularly monitor the establishment. *Tr.* 11/19/14 at 124. Investigator Brashears regularly observes two security personnel at the establishment that has an occupancy of 48 patrons. *Tr.* 11/19/14 at 124-125. He has never observed any violations of the Security Plan. *Tr.* 11/19/14 at 127.

10. Investigator Brashears spends a lot of time in the Adams Morgan neighborhood and is very familiar with the establishment. *Tr.* 11/19/14 at 102, 110. He will routinely stop by and talk to the head of security, who is well aware of the limitations of the Certificate of Occupancy. *Tr.* 11/19/14 at 104, 108. The establishment has always had an ABC Manager on duty when he monitors, and they have always been very cooperative. *Tr.* 11/19/14 at 103. He has never had any issues with the establishment. *Tr.* 11/19/14 at 103.

11. The establishment offers reggae type of entertainment and they sell Jamaican-style patties as snack food. *Tr.* 11/19/14 at 104. Investigator Brashears described the crowd as fairly diverse, with a mix of young and older patrons. *Tr.* 11/19/14 at 125-126.

III. Testimony of MPD Captain Aubrey Mongal

12. Aubrey Mongal is a Captain with the Metropolitan Police Department's (MPD) 7th District. *Tr.* 11/19/14 at 38. He has been assigned to the 7th District for one month. *Tr.* 11/19/14 at 38. Prior to that, he was assigned to the 3rd District, with responsibility for the Adams Morgan neighborhood for six years. *Tr.* 11/19/14 at 39. In his position as Captain, he deployed 10 to 20 officers in a two block area to monitor the nightlife along 18th street. *Tr.* 11/19/14 at 44. In his six years, there have been four or five stabbing incidents. *Tr.* 11/19/14 at 82, 93.

13. Capt. Mongal is familiar with the Applicant's establishment as a result of his work in that neighborhood. *Tr.* 11/19/14 at 40. He did not consider the establishment as a problem area. *Tr.*

11/19/14 at 41. He acknowledged that he received complaints over the years, but none of them was credible. *Tr.* 11/19/14 at 42-43, 50.

14. From a law enforcement perspective, nothing about the establishment required MPD to do anything differently in its efforts to monitor the area. *Tr.* 11/19/14 at 45-46. Other establishments received more complaints and a higher volume of calls for service. *Tr.* 11/19/14 at 46, 49. The establishment was never targeted as a deployment location. *Tr.* 11/19/14 at 47, 52, 90.

15. The Applicant and his staff cooperated with MPD and provided information when it was needed. *Tr.* 11/19/14 at 48, 90. Capt. Mongal always observed door staff and security present and somebody was always checking identification. *Tr.* 11/19/14 at 90. There were never any complaints from the deployed MPD officers. *Tr.* 11/19/14 at 90.

16. Capt. Mongal explained that the type of criminal activity described in a call for service listing such as simple assault or destruction of property may not be the resulting description of the reason for the call. *Tr.* 11/19/14 at 79. A call for service could be received that related to a non-incident. *Tr.* 11/19/14 at 79. The call would need to be supported by a police report to have any credibility. *Tr.* 11/19/14 at 80.

17. The four calls for service received for the Applicant's location is considered to be a low number for an establishment. *Tr.* 11/19/14 at 92-93. In this instance, three of the four calls for service were for burglar alarms. *Tr.* 11/19/14 at 92.

IV. Testimony of Jonathan Chou

18. Jonathan Chou owns the restaurant next door to the Applicant. *Tr.* 11/19/14 at 129. It is a ramen noodle bar called Sakura Ramen. *Tr.* 11/19/14 at 129. He opened for business in May 2012. *Tr.* 11/19/14 at 129, 133. He has had no issues with his neighbor, the Applicant, regarding peace, order and quiet. *Tr.* 11/19/14 at 130-131. None of Mr. Chou's customers have ever complained about Club Timehri. *Tr.* 11/19/14 at 131. Mr. Chou closes his business during the week at 10:30 pm and on the weekends between 11:00 pm and 11:30 p.m. *Tr.* 11/19/14 at 131.

V. Testimony of Arianne Bennett

19. Arianne Bennett resides at 2425 18th Street N. W., four doors south of Club Timehri. *Tr.* 11/19/14 at 134. She has lived there since October 2003. *Tr.* 11/19/14 at 134, 136. She owns the Amsterdam Falafel Shop and lives above her business on the front side of the street overlooking 18th Street N.W. *Tr.* 11/19/14 at 134, 136. She walks the streets frequently because of her dog so she is very familiar with the local businesses. *Tr.* 11/19/14 at 134-135.

20. Additionally, Ms. Bennett's business is open late so she observes everything in the neighborhood. *Tr.* 11/19/14 at 139. She is open until midnight on Sundays and Mondays; 2:30 a.m. on Tuesdays and Wednesdays, Thursdays until 3:00 a.m. and on Friday and Saturday, she is open until 4:00 a.m. *Tr.* 11/19/14 at 139.

21. Ms. Bennett has never witnessed any trouble or irresponsible behavior in front of the Applicant's establishment. *Tr.* 11/19/14 at 135. She has never observed litter, broken glass or heard loud music coming out of the club. *Tr.* 11/19/14 at 135. She has not observed them operating after hours. *Tr.* 11/19/14 at 135. She sees their security personnel in front of the establishment. *Tr.* 11/19/14 at 135.

22. Ms. Bennett sits on the Business Improvement District Board (BID) for the neighborhood, and is aware that the owner attends BID meetings. *Tr.* 11/19/14 at 135-136. It has never been her experience that the Applicant is one of the "bad actors" in the neighborhood. *Tr.* 11/19/14 at 137-138. She sees no concern with allowing the Applicant to take advantage of the extended holiday hours privileges that are enjoyed by other ABC licensed businesses in the neighborhood. *Tr.* 11/19/14 at 138-139.

23. Ms. Bennett is concerned that the government applies a double standard where well-behaved establishments don't get certain privileges and other establishments who behave badly get the privileges. *Tr.* 11/19/14 at 139.

VI. Testimony of Christopher Wells

24. Christopher Jonathan Wells has owned Club Timehri since 2007. *Tr.* 11/19/14 at 143-145. His primary business is consulting and information technology, yet he has always wanted to have an establishment with Caribbean music and flare. *Tr.* 11/19/14 at 144. He previously owned Sutra Lounge and Via Thai Restaurant in Adams Morgan. *Tr.* 11/19/14 at 144. He sold Sutra in February 2013. *Tr.* 11/19/14 at 145.

25. Mr. Wells made a few changes to the operations of the establishment when he took over the license in 2007. *Tr.* 11/19/14 at 145. The establishment had a history and was known for activities that he would not approve of. *Tr.* 11/19/14 at 146, 177. He completely overhauled the security by tightening measures and replacing the security firm. *Tr.* 11/19/14 at 146.

26. On March 10, 2012, there was an incident at his establishment that resulted in a summary suspension. *Tr.* 11/19/14 at 146. He paid a fine of \$4,000 and served a suspension for ten days. *Tr.* 11/19/14 at 146-147. Mr. Wells made a number of security changes to the establishment following the suspension. *Tr.* 11/19/14 at 148. He installed security cameras on the interior and near the rear exit. *Tr.* 11/19/14 at 148-149.

27. Additionally, all of the security personnel as well as Mr. Wells took two security classes on defensive tactics and alcohol awareness, offered by an outside security firm. *Tr.* 11/19/14 at 149. Additionally, they attended ABRA's class on spotting fake IDs. *Tr.* 11/19/14 at 149. He also had additional security requirements added to his Security Plan, such as using wands on patrons and monitoring entry and occupancy levels. *Tr.* 11/19/14 at 150.

28. Mr. Wells has been compliant with all of the new conditions placed on his license. *Tr.* 11/19/14 at 150.

29. The establishment has a capacity of 48 patrons, and is situated on one level, below the street or ground level. *Tr.* 11/19/14 at 150-151. When a patron walks down the stairs to enter the establishment, they are greeted by two security personnel who are checking identification and are wanding or patting down the patron. *Tr.* 11/19/14 at 151.

30. Once inside the venue, there is a bar that runs a quarter length of the wall where one can order drinks, beverages, cocktails and food. *Tr.* 11/19/14 at 151. Beyond the bar area is a lounge. *Tr.* 11/19/14 at 151. The bathrooms and another exit door are located at the rear of the establishment. *Tr.* 11/19/14 at 151.

31. Mr. Wells offers live entertainment in the form of DJs who play authentic Caribbean music. *Tr.* 11/19/14 at 152-153. His patrons are varied and range in age from 21 to 60 and they have both white and blue collar occupations. *Tr.* 11/19/14 at 153-154. He mistakenly believed that he could have a DJ without an Entertainment Endorsement, but discovered that was not true and he has since remedied that endorsement. *Tr.* 11/19/14 at 180-184. The Board approved the Entertainment Endorsement on June 9, 2010. *Tr.* 11/19/14 at 184.

32. Mr. Wells would like to take advantage of the extended hours law passed by the Council for certain holiday weekends. *Tr.* 11/19/14 at 154. He believes it would be a great promotional tool that would allow him to accommodate his customers who would like to enjoy an extra hour. *Tr.* 11/19/14 at 155-156.

33. Mr. Wells contacted MPD regarding calls for service in preparation for his protest hearing. *Tr.* 11/19/14 at 157; Applicant's Exhibit 1. He requested the information for Pizza Mart, Rumba, The Diner, Sakuramen and for his own establishment for the last year. *Tr.* 11/19/14 at 158. He compiled the information into a summary of the calls. *Tr.* 11/19/14 at 159. Timehri had ten calls in the previous year. *Tr.* 11/19/14 at 159, 161-162; Applicant's Exhibit 2.

34. The calls for service ranged from "disorderly in progress" to "simple assault". *Tr.* 11/19/14 at 162-163. Of the ten calls, only two resulted in police reports, one of which was a pedestrian assaulting a police officer on the sidewalk, and the second case concerned someone who used pepper spray inside The Diner. *Tr.* 11/19/14 at 163-164, 166-167. None of the ten calls for service occurred inside his establishment. *Tr.* 11/19/14 at 167.

35. Mr. Wells prepared summaries of the other establishments where he requested the calls for service. *Tr.* 11/19/14 at 168. Grand Central, located three doors south of the Applicant had 19 calls. *Tr.* 11/19/14 at 168; Applicant's Exhibit No. 3. Sakuramen had 16 calls and The Diner had 32 calls. *Tr.* 11/19/14 at 168-169; Applicant's Exhibits No 4 and 5.

36. Mr. Wells has requested that his Settlement Agreement be terminated. *Tr.* 11/19/14 at 170, 176. He inherited the Agreement in 2005 and he had no involvement in its drafting. *Tr.* 11/19/14 at 171. At the time the Board approved the Settlement Agreement, the law did not allow for holiday hours for any ABC licensed establishment. *Tr.* 11/19/14 at 171.

37. He is aware of establishments who are granted the privilege and they compete with him for business. *Tr.* 11/19/14 at 171-172. The hours limitation in his 2005 Settlement Agreement

impairs him from competing with other establishments in his neighborhood. *Tr.* 11/19/14 at 172, 194-195. Mr. Wells had no control over the Council or their efforts to adopt the extended holiday hours schedule in 2013, *Tr.* 11/19/14 at 172.

38. Mr. Wells would also like to open his establishment earlier than his Settlement Agreement currently permits, *Tr.* 11/19/14 at 173, 195. He would like to offer happy hours at 4:00 p.m. or 5:00 p.m. rather than having to wait until 8:00 p.m. to open. *Tr.* 11/19/14 at 173, 195. He has also been approached by residents to host alcohol-free reggae themed parties on Saturday afternoons for young kids to expose them to Caribbean culture and music. *Tr.* 11/19/14 at 174, 179, 196. His agreement currently bars him from hosting these events because of the hours limitations. *Tr.* 11/19/14 at 174.

39. Mr. Wells does not intend to alter or change any of his security measures if his Settlement Agreement is terminated. *Tr.* 11/19/14 at 175, 208-209, 213-214. He intends to provide sufficient security personnel so that his patrons continue to feel safe. *Tr.* 11/19/14 at 175. He is comfortable with the security requirements imposed by the Board following the 2012 incident and he has no plans to change them. *Tr.* 11/19/14 at 176, 199, 219, 223, 227. Mr. Wells is willing to maintain the four security personnel for Friday and Saturday nights; two at the front door, male and female, one in the center of the establishment, and one toward the back of the bar overlooking the bathroom area. *Tr.* 11/19/14 at 207-208.

40. Mr. Wells adopted a Security Plan that has been in use since the March 2012 incident. *Tr.* 11/19/14 at 187. He updates the Security Plan on an annual basis. *Tr.* 11/19/14 at 204. His security team constantly monitors the patrons for questionable behavior, such as a bad attitude or refusing to show identification. *Tr.* 11/19/14 at 187-189. He has eight cameras, with seven located on the inside and one located outside near the rear exit. *Tr.* 11/19/14 at 215.

41. Mr. Wells first approached the ANC to discuss amending his Settlement Agreement. *Tr.* 11/19/14 at 191, 218, 231. He thought he had reached a new agreement with the ANC, but it was not approved by the full Commission. *Tr.* 11/19/14 at 224, 231. He sought to amend his hours of operation to open earlier and to have the holiday extended hours privilege. *Tr.* 11/19/14 at 194-196, 226.

42. Mr. Wells would also like to delete language in the Settlement Agreement that references a former security firm used by the previous owner. *Tr.* 11/19/14 at 197-199, 202. The third amendment to the Settlement Agreement that Mr. Wells would like the Board to consider concerns the requirement that he attend all ANC meetings. *Tr.* 11/19/14 at 198, 221. This is sometimes difficult for him if it conflicts with his children's activities and school events. *Tr.* 11/19/14 at 198.

43. Mr. Wells is concerned that the Settlement Agreement is dated, it needs to be made more current, and it is an impediment to his business. *Tr.* 11/19/14 at 199, 212-213, 225-226. He inherited the agreement from the previous owner and it is not tailored to meet his needs. *Tr.* 11/19/14 at 212. An example of this is the requirement that he have a certain number of security personnel on Sunday nights when he may not have the size of crowd to warrant that much security. *Tr.* 11/19/14 at 200. He is currently required to have four security persons for an occupancy of 48.

Tr. 11/19/14 at 201. There are larger clubs in the neighborhood that don't have that much security. *Tr.* 11/19/14 at 202.

44. Mr. Wells was one of the first establishments to employ MPD RDO. *Tr.* 11/19/14 at 210. He has not used them since the streetscape was put in place. *Tr.* 11/19/14 at 210. The streetscape created a financial hardship so Mr. Wells can no longer afford the RDO. *Tr.* 11/19/14 at 210.

VII. Testimony of William Simpson

45. William Simpson is the Chair of ANC 1C. *Tr.* 11/19/14 at 233. The ANC protested the renewal of Club Timehri's license unanimously in November 2013. *Tr.* 11/19/14 at 233, 244. The petition to terminate the Settlement Agreement was protested unanimously in July of 2014. *Tr.* 11/19/14 at 234, 245. The proposed amended Settlement Agreement was rejected by the ANC in November 2014, on a vote of 5 to 2. *Tr.* 11/19/14 at 234, 246.

46. The ANC is concerned with licensed establishments in Adams Morgan and it regularly identifies those establishments where improvements may be needed. *Tr.* 11/19/14 at 235. They remain concerned with those establishments in particular that seek to terminate their Settlement Agreements when the ANC has worked so hard to negotiate them in the first place. *Tr.* 11/19/14 at 235. The ANC is also concerned with establishments that are not licensed as clubs yet operate as clubs. *Tr.* 11/19/14 at 236.

47. Mr. Simpson has had positive interactions with Mr. Wells every time they have encountered one another. *Tr.* 11/19/14 at 237. However, the ANC remains concerned with the establishment's investigative history, to include the stabbing that occurred in March 2012. *Tr.* 11/19/14 at 237. That incident impacted the community and other businesses. *Tr.* 11/19/14 at 237-238. It also affected people who live outside Adams Morgan, but who may now hesitate to patronize the neighborhood. *Tr.* 11/19/14 at 237-238.

48. Mr. Simpson was not able address Commissioners' specific objections to adopting a new amended Settlement Agreement. *Tr.* 11/19/14 at 238-239. Some were concerned about the number of holidays the Applicant was seeking for extended hours. *Tr.* 11/19/14 at 239, 257. The ANC believes that granting too many holidays would be problematic for an establishment where violent and challenging incidents occur. *Tr.* 11/19/14 at 239. Extended hours invites problems that the community does not need. *Tr.* 11/19/14 at 239. Some commissioners also objected to deleting the security provisions contained in the existing Settlement Agreement. *Tr.* 11/19/14 at 239.

49. Mr. Simpson does not believe that Club Timehri has fulfilled its statutory obligations to terminate its Settlement Agreement. The termination of the Settlement Agreement would have an adverse effect on the community. *Tr.* 11/19/14 at 266. He does not believe that allowing the establishment to open earlier would have a negative impact on the establishment because it might encourage more food sales. *Tr.* 11/19/14 at 268-269. Later hours, however, would present a significant concern for the community because more alcohol is consumed by patrons. *Tr.* 11/19/14 at 269.

50. Limiting the extended hours to six holidays throughout the year would be acceptable to a majority of the ANC Commissioners. *Tr.* 11/19/14 at 270. More than six holidays increases the risk that something may happen and it encourages other licensed establishments to seek the same privileges. *Tr.* 11/19/14 at 270-271.

51. Mr. Simpson was pleased to hear that Club Timehri's requested amendments concerned the hours, the elimination of the reference to an old security firm and deletion of the requirement that Mr. Wells attend ANC meetings. *Tr.* 11/19/14 at 272. The ANC also prefers to address noise, trash and litter in their agreements. *Tr.* 11/19/14 at 272.

VIII. Testimony of Bryan Weaver

52. Bryan Weaver is a former chair of ANC 1C and he served for six years as the chair of the ANC's ABC Committee. *Tr.* 11/19/14 at 285. At the time that he entered into the Settlement Agreement with the former owner, there were a number of issues related to incidents of violence, and a very lax attitude regarding security. *Tr.* 11/19/14 at 285, 297. The ABC Board and MPD did not give as much scrutiny to security issues at the time, so the ANC addressed security in the Settlement Agreement. *Tr.* 11/19/14 at 285-286, 288, 293-295. The Board's oversight of security issues improved after 2008. *Tr.* 11/19/14 at 294.

53. The management under Mr. Wells is significantly better than with the previous owner. *Tr.* 11/19/14 at 287, 297. Because the previous owner represented everything that was wrong with the operations of the club, the community insisted that he attend the ANC meetings and the public safety meetings. *Tr.* 11/19/14 at 287. That is why the existing Settlement Agreement requires mandatory attendance at the community meetings. *Tr.* 11/19/14 at 287-288.

54. Mr. Well's has made other improvements to the operations to include attracting a different crowd, reducing the presence of fewer loiterers, and keeping a commitment to active participation in the community and the Business Improvement District. *Tr.* 11/19/14 at 290, 297, 309. He also has a stronger relationship with MPD. *Tr.* 11/19/14 at 310.

55. Mr. Weaver believes that terminating the Settlement Agreement in its entirety would have a negative impact on the neighborhood. *Tr.* 11/19/14 at 299-301. Mr. Weaver desires that the establishment continue to have a very detailed security plan. *Tr.* 11/19/14 at 293, 301, 314. Granting earlier opening hours is not a concern for Mr. Weaver. *Tr.* 11/19/14 at 302, 313. He has less of an issue with extended holiday hours but he understands why the ANC wants the extended hours to be uniform across all establishments in Adams Morgan. *Tr.* 11/19/14 at 303, 315, 317.

56. Mr. Weaver thinks the parties should be able to come to agreement on some of the outdated terms of the existing Settlement Agreement such as how much staff is compensated and the color of uniforms worn by staff. *Tr.* 11/19/14 at 306. The requirement to attend ANC and public safety meetings was directed to the previous owner because he was not active in the community. *Tr.* 11/19/14 at 309.

IX. Testimony of Denis James

57. Denis James is the President of Kalorama Citizens Association (KCA). *Tr.* 11/19/14 at 318. The KCA protested both the renewal application and the petition to terminate the Settlement Agreement based on issues of peace, order and quiet. *Tr.* 11/19/14 at 318. The KCA recognizes that the existing Settlement Agreement is old and that some of the terms are not relevant to the current owner or his management of the club. *Tr.* 11/19/14 at 320.

58. Mr. James believes the hours of operation should remain as they are and that the licensee should not be granted extended holiday hours. *Tr.* 11/19/14 at 321, 323, 333. The incidents that have occurred at this location happened late at night near closing hours so lengthening the hours for sales of alcohol would increase the chances of more violent activity. *Tr.* 11/19/14 at 324. The KCA is agreeable to allowing earlier hours of operation. *Tr.* 11/19/14 at 324.

59. Additionally, Mr. James believes the Agreement should retain language that states that the occupancy number for the establishment is 48. *Tr.* 11/19/14 at 322. The provisions regarding noise, trash, garbage and rodents should remain as well. *Tr.* 11/19/14 at 322. The provisions regarding security measures should remain with the exception of those that are relevant to the previous owner and are now outdated. *Tr.* 11/19/14 at 325. Mr. James is agreeable to removing language regarding the named security firm and the compensation of the security staff. *Tr.* 11/19/14 at 325, 328; KCA Protestant's Exhibit No. 2. He believes that one of the security persons to be employed by the licensee should be female. *Tr.* 11/19/14 at 326.

60. Mr. James testified that the security provisions should mostly remain intact because there is no certainty that the same terms in a separate security plan will always be attached to the terms of the license. *Tr.* 11/19/14 at 326-328.

61. Mr. James submitted a call for service log generated by MPD. KCA Exhibit No. 1. The log shows calls for service recorded by MPD at 2439 18th Street N.W. *Id.* The calls for service log does not show whether MPD substantiated the calls or whether the establishment's patrons were responsible for the alleged incidents. *Id.* Mr. James also submitted several police reports and ABRA investigative reports. KCA Exhibit No. 2.

CONCLUSIONS OF LAW: RENEWAL APPLICATION

62. The Board may approve an Application to Renew a Retailer's Class CT License if the Applicant demonstrates that the proposed establishment will not have an adverse impact on the area located within 1,200 feet of the establishment. D.C. Code §§ 25-104, 25-313(b) (West Supp. 2013); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014). Specifically, the issue in this case is whether granting the Application will have a negative impact on peace, order, and quiet.

63. During renewal, "[t]he Board [also] consider[s] the licensee's record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license during the period of licensure, including the terms of a settlement agreement." D.C. Official Code § 25-315(b)(1).

64. The Board finds that Club Timehri has shown sufficient evidence to merit the renewal of its license. There is no evidence in the record that the renewal of the establishment's license would affect the peace, order and quiet of the neighborhood. To the contrary, the record shows that ABRA monitored the establishment on 20 separate occasions and no ABRA investigator observed loitering, trash or excessive noise.

65. Further, as of the date of the hearing, Club Timehri has no recorded violations of its Settlement Agreement. Therefore, the Board finds that Club Timehri merits renewal of its Retailer's Class CT License.

CONCLUSIONS OF LAW: TERMINATION PETITION

66. Under D.C. Official Code § 25-446(d)(1), "Unless a shorter term is agreed upon by the parties, a settlement agreement shall run for the term of a license, including renewal periods, unless it is terminated or amended in writing by the parties and the termination or amendment is approved by the Board. D.C. Official Code § 25-446(d)(1). Accordingly,

The Board may approve a request by fewer than all parties to amend or terminate a settlement agreement for good cause shown if it makes each of the following findings based upon sworn evidence:

- (A)(i) The applicant seeking the amendment has made a diligent effort to locate all other parties to the settlement agreement; or
- (ii) If non-applicant parties are located, the applicant has made a good-faith attempt to negotiate a mutually acceptable amendment to the settlement agreement;
- (B) The need for an amendment is either caused by circumstances beyond the control of the applicant or is due to a change in the neighborhood where the applicant's establishment is located; and
- (C) The amendment or termination will not have an adverse impact on the neighborhood where the establishment is located as determined under § 25-313 or § 25-314, if applicable.

D.C. Official Code § 25-446(d)(4)(A)-(C).

67. The Board amends the Settlement Agreements based on changes in circumstances and to the law that have occurred since the Settlement Agreement was executed in June 9, 2004. These specific changes are described below.

- A. CLUB TIMEHRI SATISFIED § 25-446(D)(4)(A) BY ATTEMPTING TO NEGOTIATE AN AMENDED SETTLEMENT AGREEMENT IN GOOD FAITH WITH ANC 1C AND THE KCA.**

68. The Board finds that Club Timehri satisfied § 25-446(D)(4)(A) through its negotiation with the parties to amend its existing Settlement Agreement.

69. Under § 25-446(d)(4)(A), in order to terminate or amend a Settlement Agreement when the other signatories have been located, it must be shown that “the applicant has made a good-faith attempt to negotiate a mutually acceptable amendment to the settlement agreement.” § 25-446(d)(4)(A)(i)-(ii).

70. In Hank’s Oyster Bar, the Board stated that a licensee satisfies its obligation to attempt to negotiate an amended settlement agreement in good faith by engaging in “honesty in fact in the conduct or transaction concerned.” § 25-446(d)(4)(A)(ii); In re Leeds the Way, LLC t/a Hank’s Oyster Bar, Case Number 10-PRO-00094, Board Order No. 2012-319, ¶ 54 (D.C.A.B.C.B. Sept. 12, 2012) citing Big Builders, Inc. v. Israel, 709 A.2d 74, 77 (D.C. 1998). Consequently, if the licensee engages in negotiations with the other signatories to its agreement, the Board will only deem such efforts unsatisfactory under § 25-446(d)(4)(A)(ii) if it is shown that the licensee engaged in “fraud, deceit, or dishonesty.” In re Leeds the Way, LLC t/a Hank’s Oyster Bar, Board Order No. 2012-319, at ¶ 55. The Board further notes that § 25-446(d)(4)(A) is not a mechanism to second guess a licensee’s negotiating position—whether reasonable or unreasonable. In re Multi-Management, Inc., t/a Habana Village, Case Number 13-PRO-00094, Board Order No. 2014-033, ¶¶ 32, 35 (D.C.A.B.C.B. Feb. 5, 2013).

71. The Board credits Mr. Wells’ testimony that he initially approached the ANC to amend his Settlement Agreement. Mr. Simpson acknowledged that the full ANC was presented with an amended Settlement Agreement that was negotiated by the ANC’s ABC Committee. The new amended agreement was eventually rejected by the ANC. There is no allegation or evidence that Club Timehri engaged in fraud, deceit, or dishonesty.

72. Therefore, the Board finds that Club Timehri has provided sufficient evidence that it has satisfied § 25-446(d)(4)(A).

B. CLUB TIMEHRI DEMONSTRATED THAT SOME OF THE PROVISIONS OF THE SETTLEMENT AGREEMENT MERIT AMENDMENT UNDER § 25-446(D)(4)(B) BASED ON A CHANGE IN THE LAW AND A CHANGE IN CIRCUMSTANCES.

73. Club Timehri has provided sufficient evidence to demonstrate that amendments to the 2005 Settlement Agreement are warranted. Under § 25-446(d)(4)(B), in order to terminate or amend a settlement agreement, a licensee must show “[t]he need for an amendment is either caused by circumstances beyond the control of the applicant or is due to a change in the neighborhood where the applicant’s establishment is located.” § 25-446(d)(4)(B). The Board previously stated in Hank’s Oyster Bar that a change to the liquor law, which has a nexus to the settlement agreement attached to a petitioner’s license, satisfies § 25-446(d)(4)(B). In re Leeds the Way, LLC t/a Hank’s Oyster Bar, Board Order No. 2012-319, at ¶¶ 57-63.

74. The Board approved the Club Timehri settlement agreement on April 27, 2005. It finds that certain terms of the Settlement Agreement have either outlived their usefulness, conflict with

existing law, or are no longer applicable or relevant due to a change in ownership and changes in the neighborhood. The Board's rationale follows with respect to amending the Settlement Agreement as it relates to three specific subject areas: hours of operation, security measures, and the Applicant's relations with the ANC and the community. The Board notes that it is only making minor amendments to the Settlement Agreement and any section not discussed in this Order will remain in place and in full effect.

i. HOURS OF OPERATION

75. The Board finds merit to amending the Settlement Agreement as it concerns the Applicant's hours of operation. Specifically, the Board finds that allowing the Applicant to apply for full legal hours, to include the extended holiday privilege, will not have a negative impact on the neighborhood's peace, order and quiet.

76. Club Timehri's existing Settlement Agreement restricts the opening of the establishment to 8:00 p.m. There is no evidence in the record that supports an 8:00 p.m. opening as a means to make the neighborhood safer, cleaner or less noisy. On the contrary, the Board finds the Applicant's argument for an earlier opening to host happy hours and entertain children at alcohol-free Caribbean cultural and musical events to be persuasive. Mr. Simpson indicated that earlier hours would not have a negative impact on the community and may even encourage additional food sales. Likewise, earlier hours were not a concern for Mr. Weaver, former chair of the ANC's ABC Committee.

77. The Board also finds that the Applicant should be permitted to amend its Settlement Agreement regarding its closing hours. The Board makes this finding based on changes in the law that took effect after the existing Settlement Agreement was approved by the Board in 2005. Specifically, as of May 1, 2013, the Council of the District of Columbia amended D.C. Official Code § 25-723 for the purpose of extending the legal hours of operation for all on-premise retail license holders on holidays and to place limits on settlement agreements, among other changes. D.C. Official Code §§ 25-446.01-25-446.02, 25-723; see generally Council of the District of Columbia, Omnibus Alcoholic Beverage Regulation Amendment Act of 2012, § 2 (effective May 1, 2013, D.C. Law 19-3210).

78. Under the 2013 law, settlement agreements may not (1) require the approval of third parties before a licensee may engage in an ownership change, § 25-446.02(1)(A); (2) require notice to third parties regarding the intent to transfer ownership, § 25-446.02(1)(B); (3) require the creation of restrictions that prevent a licensee from applying for changes to its operation, including changing its hours, § 25-446.02(1)(E); (4) require the creation of new administrative procedures beyond those required by ABRA or another D.C. agency, § 25-446.02(2); (5) require a licensee to attend meetings, § 25-446.02(3); and (6) require the licensee to submit documents to third parties. D.C. Official Code § 25-446.02(5).

79. Consequently, the Board finds that Club Timehri merits an amendment to its Settlement Agreement that aligns the agreement with current law regarding hours of operation.

ii. **SECURITY**

80. The Board credits Mr. Well's testimony that he has improved security measures at the establishment, albeit most of it at the direction of the Board. The record reflects that as a result of an incident in 2012, the Board ordered the Applicant to submit a Security Plan to strengthen the establishment's security measures. The Security Plan includes new and more comprehensive security measures that require the installation and operation of a camera security system, the employment of four security personnel, wandering of patrons, to name just a few enhancements. *Board Order No. 2012-118.*

81. The record also reflects that the Applicant continues to comply with the requirements of the Security Plan. Additionally, the Board notes that the Applicant's investigative history is scant following the implementation of the 2012 Security Plan. Indeed, the information provided by the KCA and MPD does not contradict this evidence because the calls for service at this location do not show a significant amount of police activity.

82. The Board also credits the Mr. Well's testimony that he updates his Security Plan on an annual basis, that he is comfortable with the current requirements of the Security Plan, and that he does not intend to lessen the measures of the Security Plan even if the Settlement Agreement is terminated.

83. The Board notes that the 2012 Security Plan is still in effect and will remain so as long as the Club Timehri license is active. As such, the Board does not find it necessary for the 2005 Settlement Agreement to retain references to the employment of STRATEC, Inc. security firm, nor is it necessary to retain the ADDENDUM TO AGREEMENT FOR SECURITY SERVICES or the AGREEMENT FOR SECURITY SERVICES.

84. The Adams Morgan neighborhood need not worry that deletion of these requirements in the Settlement Agreement will lead to an increase in crime or other forms of disorder. Stronger and more relevant provisions regarding security measures are adequately addressed by the Applicant's 2012 Security Plan and provide sufficient protections to the community.

85. Consequently, the Board finds that Club Timehri merits an amendment to its Settlement Agreement regarding the elimination of redundant and outdated security provisions.

iii. **ANC AND COMMUNITY RELATIONS**

86. The Board finds that language in the 2005 Settlement Agreement with regard to community relations should be struck. The Board credits the unrefuted testimony of the Applicant that he is quite active in the neighborhood and various community organizations, and is a former member of the BID. The Board notes that even a witness for one the Protestant Groups even acknowledged that the Applicant is an active participant in community affairs and that the provision regarding compulsory attendance at ANC meetings was specifically directed to the previous owner of Club Timehri.

87. Moreover, it is a regular practice of the Board to reject provisions in current Settlement Agreements regarding attendance at ANC or other community members because it is not enforceable under § 25-446.02. Rather, the Board encourages licensees and community groups to meet and work together for the sake of working out any differences or addressing concerns that might arise between renewal periods.

88. Consequently, the Board finds that Club Timehri merits an amendment to its Settlement Agreement regarding the deletion of language as it relates to attendance at monthly ANC and MPD meetings due to its unenforceability.

C. CLUB TIMEHRI DEMONSTRATED THAT AMENDING THE SETTLEMENT AGREEMENT WILL NOT RESULT IN AN ADVERSE IMPACT UNDER § 25-446(D)(4)(C).

89. The burden is on the Applicant to show that “[t]he amendment or termination will not have an adverse impact on the neighborhood where the establishment is located as determined under § 25-313 or § 25-314, if applicable.” § 25-446(d)(4)(C). The Board determines that amendments to a settlement agreement that align the agreement with current law shall generally be deemed not to have an adverse impact on the neighborhood. To do otherwise, would require the Board to act contrary to the intent of the Council of the District of Columbia when it amended Title 25 in 2013. Therefore, the Board finds that the amendments to the agreement, which the Board will describe in its Order below, shall not have an adverse impact on the neighborhood.

D. THE BOARD’S ORDER GIVES ANC 1C’S ISSUES AND CONCERNS GREAT WEIGHT.

90. The Board recognizes that an Advisory Neighborhood Commission’s (ANC) 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); D.C. Official Code §§ 1-309.10(d); 25-609. Accordingly, the Board “must elaborate, with precision, its response to the ANC[’s] issues and concerns.” Foggy Bottom Ass’n, 445 A.2d at 646. The Board notes that it received a recommendation from ANC 1C.

91. ANC 1C further recommended that the settlement agreement remain intact.

92. The Board considered the recommendation of ANC 1C, but found the ANC’s position regarding the Petition unpersuasive. First, the Settlement Agreement was a contract entered into by the ANC and the previous owner of the establishment. Thus, many of the terms in the existing agreement are no longer relevant and should not be imposed on the current owner. Second, Title 25 does not require the Board to provide less weight to the testimony and evidence provided by a commercial property owner. Consequently, for these reasons, the Board is unconvinced by the recommendation of ANC 1C related to the Petition.

E. THE PETITIONER SATISFIED ALL REMAINING REQUIREMENTS REQUIRED BY TITLE 25.

93. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants in their initial protest. 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. Accordingly, based on the Application, the Petition, and this matter’s record, the Board finds that Club Timehri has satisfied all remaining requirements imposed by Title 25 and Title 23 to merit renewal of its license and the amendment of its Settlement Agreement.

ORDER

Therefore, the Board, on this 11th day of February 2015, hereby **GRANTS** the Application to Renew a Retailer’s Class CT License filed by Caribbean Vibes, Inc., t/a Club Timehri.

IT IS ORDERED that the Petition to Terminate the Settlement Agreement is **DENIED**.

IT IS FURTHER ORDERED that the Settlement Agreement entered into by Club Timehri, ANC IC and the KCA shall be **AMENDED** as follows:

- I. The Board strikes the header HOURS OF OPERATION, and all references to the Applicant’s hours of operation.
- II. In the section titled SECURITY, the Board strikes the entire first paragraph and replaces it with the following language; “As long as the ABC license is active, the Applicant will employ or contract with a professional security company to provide security services”.
- III. In the section titled SECURITY, the Board strikes the entire second paragraph and replaces it with the following language; “On Friday and Saturday nights and as it is deemed appropriate by management, the Applicant will have a member of the management staff posted to the inner door in addition to the two security personnel to further screen patrons and check identification”.
- IV. The Board strikes the header ANC & COMMUNITY RELATIONS.
- V. In the Section titled ANC & COMMUNITY RELATIONS, the Board strikes all of paragraphs one and two in their entirety.
- VI. In the Section titled ANC & COMMUNITY RELATIONS, the Board strikes the phrase, “and ANC IC” from the end of the paragraph.

VII. In the Section titled ANC & COMMUNITY RELATIONS, the Board strikes the first sentence in the fourth paragraph.

VIII. The Board strikes the document titled ADDENDUM TO AGREEMENT FOR SECURITY SERVICES from the Settlement Agreement.

IX. The Board strikes the document titled AGREEMENT FOR SECURITY SERVICES from the Settlement Agreement.

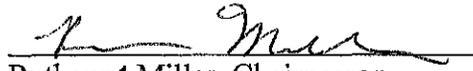
IT IS FURTHER ORDERED that all other provisions of the Settlement Agreement shall remain in full force and effect.

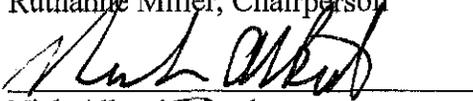
The Board **ADVISES** Club Timehri that the Board will monitor and strictly enforce the conditions contained in this Order, as well as the Applicant's Settlement Agreement and Security Plan.

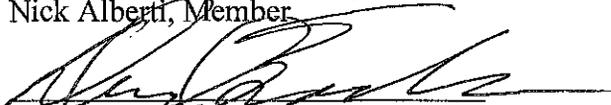
The Board **FURTHER ADVISES** Club Timehri that it does not have a Cover Charge privilege on its Entertainment Endorsement, and as a result should not be charging a cover. The Applicant is welcome to amend its Entertainment Endorsement to include a Cover Charge with the approval of the Board.

ABRA shall provide copies of this Order to the Petitioner, ANC IC, and the KCA.

District of Columbia
Alcoholic Beverage Control Board

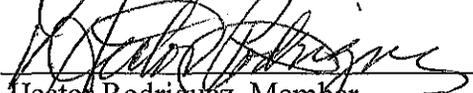

Ruthanne Miller, Chairperson

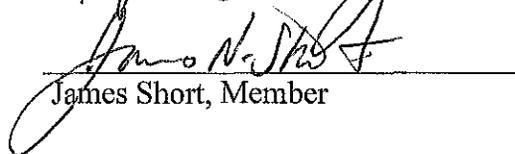

Nick Alberti, Member


Donald Brooks, Member

Herman Jones, Member


Mike Silverstein, Member


Hector Rodriguez, Member


James Short, Member

Under 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, Reeves Center, 2000 14th Street, NW, 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, 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).