

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

_____)	
In the Matter of:)	
)	
Don Juan Restaurant, Inc.)	License Number: 015934
t/a Don Juan Restaurant)	Case Number: 10-PRO-00114
)	Order Number: 2010-468
Petition to)	
Terminate a Voluntary Agreement)	
for a Retailer's Class CR License)	
)	
at premises)	
1660 Lamont Street, N.W.)	
Washington, D.C. 20009)	
_____)	

Don Juan Restaurant, Inc., t/a Don Juan Restaurant, represented by Attorney Rick Massumi, Applicant

Sam Broeksmit, on behalf of the Mount Pleasant Neighborhood Alliance (MPNA), Protestant

BEFORE: Nick Alberti, Acting Chairperson
 Mital Gandhi, Member
 Donald Brooks, Member
 Herman Jones, Member
 Calvin Nophlin, Member
 Mike Silverstein, Member

**ORDER DENYING MOTION TO DISMISS AND
MOTION TO POSTPONE PROTEST HEARING**

The Petition to Terminate a Voluntary Agreement for a Retailer's Class CR License filed by Don Juan Restaurant, Inc., t/a Don Juan Restaurant, (Applicant), which has been protested by the MPNA (Protestant) came before the Alcoholic Beverage Regulation Administration (ABRA) for a Roll Call Hearing on August 30, 2010, in accordance with D.C. Official Code § 25-601 (2001). The Status Hearing is scheduled for September 22, 2010, and the Protest Hearing is scheduled for November 10, 2010.

The Protestant submitted a Motion to Dismiss and Request to Postpone, dated August 16, 2010, which asks the Board to dismiss the Petition filed by the Applicant and postpone the Protest Hearing and Remand Hearing. The Protestant argues that the Applicant is not entitled to file a Petition to Terminate a Voluntary Agreement for a Retailer's Class CR License until 2012 because the Voluntary Agreement, originally approved in 1998, was amended and approved in 2008. As a result, the Protestant argues that the Applicant has not satisfied the four year waiting period created by Title 25 of the

District of Columbia Official Code. The Protestant also requested that the Board postpone all further actions regarding the Applicant's 2010 request to terminate its Voluntary Agreement until all other actions are complete from their 2007 request to terminate their Voluntary Agreement and to receive an entertainment endorsement.

The Applicant replied to the Protestant's Motions on August 24, 2010. The Applicant asserted that the Voluntary Agreement was initially approved in 1998, not 2008 as argued by the Protestant. Furthermore, the Applicant argued that postponement is premature because the Court of Appeals could issue a decision before the Protest Hearing on November 10, 2010. On the other hand, the Applicant agrees that the Remand Hearing should be postponed.

The Board agrees with the Applicant that the Applicant's Petition to Terminate a Voluntary Agreement for a Retailer's Class CR License is timely. As stated in D.C. Code § 25-446, the Board may accept a Petition to Terminate a Voluntary Agreement for a Retailer's Class CR License early if it is received "[a]fter 4 years from the date of the Board's decision *initially approving* the voluntary agreement." D.C. Code § 25-446(d)(2) (emphasis added). Here, the Voluntary Agreement was approved in 1998 and amended in 2008. An amendment to a voluntary agreement does not constitute initial approval. As such, the Protestant's Motion to Dismiss on this ground is incorrect because the Voluntary Agreement was initially approved approximately 12 years ago.

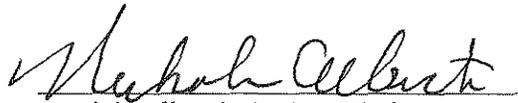
In addition, the Board agrees with the Applicant that it is premature to postpone the Protest Hearing. The Board will not entertain requests to postpone the Protest Hearing on November 10, 2010, at the present time. However, the Board will reschedule the Remand Hearing for November 10, 2010.

As such, the Board denies the Protestant's Motion to Dismiss and the Protestant's Request to Postpone the Protest Hearing.

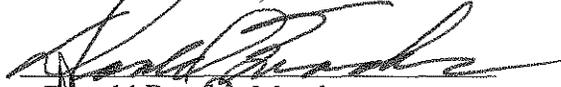
ORDER

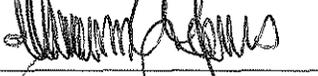
The Board does hereby, this 15th day of September 2010, **DENY** the Motion to Dismiss and the Request to Postpone the Protest Hearing filed by Sam Broeksmit on behalf of the MPNA. Copies of this Order shall be sent to the Applicant and to the Protestant.

District of Columbia
Alcoholic Beverage Control Board


Nick Alberti, Acting Chairperson

Mital M. Gandhi, Member


Donald Brooks, Member


Herman Jones, Member


Calvin Nophlin, Member

Mike 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, 1250 U Street, N.W., Third Floor, Washington, DC 20009.