

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

**In the Matter of:** )  
)  
Eatonville, Inc., t/a Eatonville )  
t/a Eatonville )  
Application for a New )  
Retailer's Class CR License )  
)  
at premises )  
2121 14th Street, N.W. )  
Washington, D.C. 20009 )  
)

Case Number: 13-PRO-00037  
License Number: 078882  
Order Number: 2013-407

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Eatonville, Inc., t/a Eatonville, Applicant  
  
Stephen J. O'Brien, of the firm Mallios & O'Brien, on behalf of the Applicant  
  
William Girardo, Abutting Property Owner, Protestant  
  
Marc Morgan, Commissioner, Advisory Neighborhood Commission (ANC) 1B, Protestant  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**ORDER DENYING THE APPLICANT'S MOTION TO DISMISS**

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Eatonville, Inc., t/a Eatonville, (Applicant) filed an Application to Renew its Retailer's Class CR License (Application) at premises 2121 14th Street, N.W., Washington, D.C. Advisory Neighborhood Commission (ANC) 1B, represented by ANC Commissioner Marc Morgan, and Abutting Property Owner William Girardo timely filed separate protests against the Application under District of Columbia Official Code § 25-602.

The Applicant has filed a Motion to Dismiss (Motion), which asks us to dismiss Mr. Girardo based on our decision in the 2010 protest filed against the Applicant by Mr. Girardo under the doctrine of *res judicata*. Mot. to Dismiss, 2. Specifically, in 2010, Mr. Girardo filed a protest based on the noise generated by the Applicant, which could be heard in his residence. In re Eatonville, Inc., t/a Eatonville, Case Number 10-PRO-00082, Board Order No. 2010-538, ¶¶ 4, 12-14, 26 (D.C.A.B.C.B. Oct. 27, 2010). In 2010, we found the establishment “appropriate,” because the noise heard in Mr. Girardo’s residence located in a commercial zone was not a violation of the noise law found in § 25-725, which exempts noise heard in commercial zones. Id. at ¶ 28.<sup>1</sup> Mr. Girardo objects to the Motion, because the issue in the present matter is related to the Applicant’s compliance with its Settlement Agreement. Reply, Girardo, 1-2.

In Gallothom, the court discussed the issue of *res judicata* and collateral estoppel in protests before this Board. In re Gallothom, Inc. v. District of Columbia Alcoholic Beverage Control Board, 820 A.2d 530, 532 (D.C. 2003). According to the court, “Res judicata bars claim based on the same factual transaction and the same parties if an action was brought or could have been brought in a forum that has rendered a final decision on the merits.” Id. “Collateral estoppels . . . renders conclusive in the same or a subsequent action determination of an issue of fact or law when (1) the issue is actually litigated and (2) determined by a valid, final judgment on the merits; (3) after a full and fair opportunity for litigation by the parties . . . ; (4) under circumstances where the determination was essential to the judgment . . . .” Id. at 532-33. The court noted that these doctrines applied in contested cases before administrative agencies. Id. at 533. Nevertheless, the court admitted that “there may be practical reasons to refuse to apply the doctrines.” Id. Furthermore, an agency decision cannot “have preclusive effect when [the legislature], either expressly or impliedly, indicate[s] that it intended otherwise.” Id.

The court then concluded that “Before renewing [a] license . . . the statute requires the Board to make new findings separate and apart from any prior findings [regarding the appropriateness of an establishment].” Id. Thus, “prior adjudications are subject to modification and reexamination.” Id.

The issue of whether the Applicant is compliant with its Settlement Agreement is separate from the issue of whether it is compliant with the District’s noise laws; therefore, we find that Mr. Girardo raises a question of material fact that can only be addressed through the protest process.

We also note that our decision in 2010 is no longer binding or persuasive precedent for future proceedings involving the Applicant based on changes to the law. In 3313 11th Hospitality, a 2011 case, the Board stated,

In the past, the Board has not been persuaded by arguments that an establishment will disturb residents in commercial zones by creating noise, because D.C. Code § 25-725 . . . provides ABC-licensed establishments in commercial zones broad

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<sup>1</sup> The Board notes that paragraph 28 of the 2010 Order contains two clerical errors. First, the paragraph should refer to D.C. Official Code § 25-725 instead of D.C. Official Code § 25-724. Second, the last sentence of the paragraph should read: “. . . the [Applicant] is entitled to produce the noise that is currently audible in the Protestant’s residence.”

exemptions to the noise prohibitions contained in the ABC laws. *See, e.g., Eatonville, Inc., t/a Eatonville*, Board Order No. 2010-538, 6 (Oct. 27, 2010). However, this strict approach no longer is warranted given recent changes to the District of Columbia's disorderly conduct laws.

[The new disorderly conduct 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. 2010). As such, the Board finds that it now has a duty to consider the impact of noise on a neighborhood, even if such noise is exempted by § 25-725, because creating unreasonably loud noises after 10:00 p.m. is now deemed disorderly conduct[,] and D.C. Code § 25-823(2) empowers the Board to punish ABC licensees that allow "unlawful" or "disorderly" conduct to occur on their premises.

In re 3313 11 th Hospitality, LLC, t/a To Be Determined, Case Number 10-PRO-00139, Board Order No. 2011-170, ¶¶ 58-59 (D.C.A.B.C.B. Apr. 20, 2011).

In light of this precedent, there are sufficient "practical reasons" for the Board to reject applying the doctrines of *res judicata* and collateral estoppels to this matter. In re Gallothom, Inc., 820 A.2d at 533. First, in accordance with 3313 11th Hospitality, § 22-1321(d), which was enacted after our decision in 2010, opens the door for the Board to reevaluate whether the noise created by the Applicant violates the 2011 disorderly conduct law passed by the Council. Second, as part of the renewal process, in accordance with Gallothom, the Board is entitled by law to modify or reexamine its decision in 2010.<sup>2</sup>

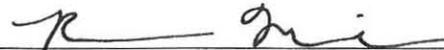
### ORDER

Therefore, the Board, on this 18th day of September 2013, hereby **DENIES** the Motion to Dismiss filed by the Applicant. ABRA shall deliver copies of this Order to the Applicant, ANC 1B, and Mr. Girardo.

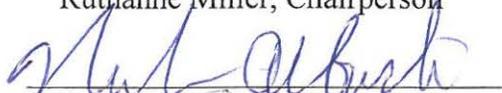
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<sup>2</sup> This opinion is limited to the Motion to Dismiss filed by the Applicant. The Board emphasizes that it has not made any determinations regarding the appropriateness of the Application.

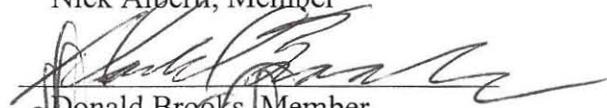
District of Columbia  
Alcoholic Beverage Control Board



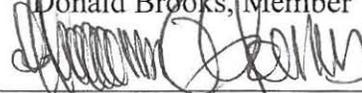
Ruthanne Miller, Chairperson



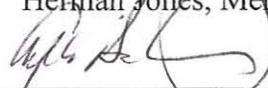
Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, 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, under 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 under 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).