

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

_____)	
In the Matter of:)	
El Atardecer, LLC)	
t/a El Atardecer Restaurant)	
Applicant for a New)	Case No. 13-PRO-00095
Retailer's Class DR License)	License No. ABRA-092346
)	Order No. 2013-565
)	
at premises)	
3475 14th Street, N.W.)	
Washington, D.C. 20010)	
)	
Mailing address)	
3539 Georgia Avenue, N.W.)	
Washington, D.C. 20010)	
_____)	

El Atardecer, LLC, t/a El Atardecer Restaurant (Applicant)

Kent Boese, Chairperson, Advisory Neighborhood Commission (ANC) 1A

Cara Ritacco, Chad Alan, David Dale, and Douglas Burnett, Abutting Property Owners

Chad Alan, on behalf of A Group of Five or More Individuals (Approximately 58 Individuals)

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

**ORDER ON SETTLEMENT AGREEMENT AND
WITHDRAWAL OF PROTESTS**

The Application filed by El Atardecer, LLC, t/a El Atardecer Restaurant, for a new Retailer's Class DR License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on August 5, 2013, in accordance with D.C. Official Code § 25-601 (2001).

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The official records of the Board reflect that the Applicant and ANC 1A have entered into a Settlement Agreement (Agreement), dated September 24, 2013, that governs the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant; Chairperson Kent Boese, on behalf of the ANC 1A; and Chad Alan, on behalf of the Group of Five or More Individuals, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protests filed by ANC 1A, the Group of Five or More Individuals, Cara Ritacco, Chad Alan, David Dale, and Douglas Burnett.

Accordingly, it is this 20th day of November, 2013, **ORDERED** that:

1. The Application filed by El Atardecer, LLC, t/a El Atardecer Restaurant, for a new Retailer's Class DR License located at 3539 Georgia Avenue, N.W., Washington, D.C., is **GRANTED**;
2. The Protests of ANC 1A, the Group of Five or More Individuals, Cara Ritacco, Chad Alan, David Dale, and Douglas Burnett in this matter are hereby **WITHDRAWN**;
3. The above-referenced Settlement Agreement submitted by the parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications:

Section 8 (License Ownership and Compliance with ABRA Regulations) – The following sentence shall be removed: "Applicant also specifically agrees to be the sole owner of the ABC license."

Section 10 (Notice and Opportunity to Cure) – The third sentence shall be modified to read as follows: "If Applicant fails to cure within the 30-day period (or, with respect to a breach which reasonably requires more than 30 days to cure, fails to commence cure of such breach and diligently pursue such cure), such failure shall constitute a cause for the ANC to file a complaint with the ABC Board, pursuant to D.C. Official Code § 25-446(e)."

The parties have agreed to these modifications.

4. Copies of this Order shall be sent to the Applicant, ANC 1A, Cara Ritacco, David Dale, Douglas Burnett, and Chad Alan, on behalf of the Group of Five or More Individuals.

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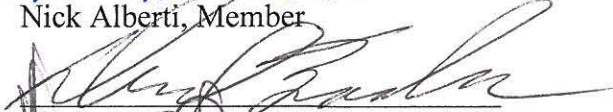
District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



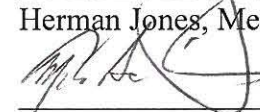
Nick Alberti, Member



Donald Brooks, Member

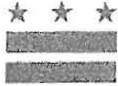


Herman Jones, Member



Mike Silverstein, Member

Pursuant to D.C. Official Code § 25-433, any Party adversely affected by this Order may file a Motion for Reconsideration 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.



ADVISORY NEIGHBORHOOD COMMISSION 1A

SMD 1A01 – Daniel Kornfield
SMD 1A04 – Morgan Corr
SMD 1A07 – Thomas Boisvert
SMD 1A10 – Anthony Cimino

SMD 1A02 – Vickey Wright-Smith
SMD 1A05 – Kevin Holmes
SMD 1A08 – Kent Boese
SMD 1A11 – Dotti Love Wade

SMD 1A03 – Steve Swank
SMD 1A06 – Patrick Flynn
SMD 1A09 – Bobby Holmes
SMD 1A12 – Rosalind Gilliam

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made on this 24th day of September 2013 by and between EL Atardecer, LLC t/a EL Atardecer Restaurant (“Applicant”), and Advisory Neighborhood Commission 1A (“Protestant”), (collectively, the “Parties”).

WITNESSETH

WHEREAS, Applicant has applied for a License Class D for a business establishment (“Establishment”) located at 3475 14th Street, N.W., Washington, D.C. (“Premises”);

WHEREAS, Protestant is Advisory Neighborhood Commission 1A, who filed a timely protest (the “Protest”) against the issuance of the Applicant’s license application pursuant to D.C. Official Code § 25-601(1) and 601(4), respectively;

WHEREAS, the Parties have agreed to enter into this Agreement and request that the Alcoholic Beverage Control Board (“ABC Board”) approve the Applicant’s license application conditioned upon the Applicant’s compliance with the terms of this written Agreement; and

WHEREAS, the Parties are desirous of entering into a Settlement Agreement pursuant to D.C. Official Code § 25-446 for the operation and maintenance of the Establishment in such a manner as to minimize the effect on (i) the peace, order and quiet of the neighborhood and (ii) pedestrian safety and vehicular traffic, and to eliminate the need for a Protest Hearing regarding the license application.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the Parties agree as follows:

1. **Recitals Incorporated.** The recitals set forth above are incorporated herein by reference.
2. **Nature of the Business.** The Applicant will manage and operate a restaurant with an emphasis on food. Food service will be available at all times that alcoholic beverages are served.

3. ***Hours of Sales.***

The Applicant's hours for selling and serving alcohol shall be as follows:

Sunday noon – 2:00 a.m.,
Monday through Thursday 11:00 a.m. – 2:00 a.m.,
Friday and Saturday 11:00 a.m. – 3:00 a.m.

The Applicant's hours for selling and serving alcohol on the sidewalk café shall be as follows:

Sunday noon – 11:00 p.m.,
Monday through Saturday 11:00 a.m. – 11:00 p.m.,

The Applicant has the right to, but is not obligated to, sell and serve food and alcohol on the Sidewalk Café. Tables and chairs will be stacked immediately upon the closure of the sidewalk café. Applicant agrees that the establishment will be shut down and completely vacated by patrons, except for routine maintenance and clean-up by closing time each night. Applicant agrees that there will be no after-hours activities in the establishment.

On special occasions the establishment may stay open later if permissible by DC law or ABRA.

4. ***Floors Utilized and Occupancy.*** The Applicant will operate its establishment on the 1st floor of the building. The Establishment will have no more than are permissible by code and Fire regulations.
5. ***Public Space – Trash – Rodents.*** Applicant shall keep the sidewalk (up to and including the curb), curb, and the adjacent alley clean and free of litter, bottles, and other debris in compliance with D.C. Code and Municipal Regulations. Applicant shall police these areas sufficiently to assure that refuse and other materials are promptly removed. Applicant will provide for the proper removal of grease and oils and will not deposit these substances for removal in dumpster. The Applicant agrees to obtain a dumpster to be placed in the rear of the building. The Applicant shall deposit trash and garbage only in rodent-proof dumpsters and shall see that dumpster covers fit property and remain fully closed except when trash or garbage is being added or removed. Applicant shall have professional extermination services or provide them as needed. Applicant shall ensure that the area around the dumpster is kept clean at all times and the dumpster is placed such that it does not encroach on the abutting property owners and so that no garbage is placed on the abutting property. Applicant will not place any items, including tables and/or chairs on the sidewalk café without proper licensing. Applicant shall request that its trash and recycling contractors collect trash and materials no earlier than 9:00 a.m. and no later than 5:00 p.m. Recyclables will not be dumped after 10:00 p.m.

6. ***Capacity – Music – Noise.***

- a. Applicant shall at all times adhere to its occupancy limit as specified in its Certificate of Occupancy Permit, which shall remain posted in public view at all times
- b. Applicant shall post a conspicuous sign at each exit advising patrons of the residential neighborhood and the necessity of quiet departure. Applicant will take necessary steps to control the noise generated by the operation of any outdoor space to avoid disturbing nearby residents
- c. Applicant may have recorded and background music without an entertainment endorsement. “Entertainment” means live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys. The term “entertainment” shall not include the operation of a jukebox, a television, a radio, or other prerecorded music. Applicant agrees that live musical entertainment will not be permitted in the establishment. No live, recorded, or amplified music will be permitted on the sidewalk café
- d. Applicant will strictly comply with D.C. Official Code § 25-725 and to that end shall make architectural improvements to the property and take all necessary actions to ensure that music and noise from the Establishment are not audible within the adjacent residential properties. Applicant agrees to implement sound suppression measures that will mitigate any noise from this restaurant that may be heard in surrounding resident's homes, including keeping its doors and windows closed when music is being played at the establishment
- e. Applicant shall configure any and all speaker systems such as to minimize sound from being heard outside the premises.
- f. The parties agree to cooperate in conducting noise level checks to assure compliance with this subsection. In the event there shall be a violation of this subsection, Applicant shall take all steps necessary to prevent the repetition of such violation

7. ***Security Cooperation.*** All due diligence will be made by the Applicant will discourage loitering in front of or in the vicinity of its establishment, especially rowdy behavior. Applicant agrees that it shall take all necessary steps to minimize such problems, including, without limitation, designating a sufficient number of employees to address unruly patrons, whether inside or in the immediate outside area, and maintaining contact and cooperating with MPD and other enforcement officials.

8. ***License Ownership and Compliance with ABRA Regulations.*** Applicant promises to

Settlement Agreement between ANC 1A and EL Atardecer (ABRA-092346)

Protestants that it shall abide by all Alcoholic Beverage Regulations Administration (ABRA) regulations regarding the ownership of the license and all other provisions applicable to liquor licensees, and agrees that Protestants shall have standing to ask the ABC Board to enforce any violations of the agreement. Applicant also specifically agrees to be the sole owner of the ABC license.

9. **Binding Effect.** This Agreement shall be binding upon and enforceable against the successors and assigns of the Applicant during the term of the license to which this Agreement applies,

10. **Notice and Opportunity to Cure.** In the event that any of the parties is in breach of this Agreement, it shall be entitled to reasonable notice and opportunity to cure, as a condition precedent to seeking enforcement of the Agreement. Unless the breach is of an emergency nature or is a repetition of a prior breach, reasonable notice and opportunity shall provide for a cure within 30 days of the date of such notice. If Applicant or the licensee fails to cure within the 30-day period (or, with respect to a breach which reasonably requires more than 30-days to cure, fails to commence cure of such breach and diligently pursues such cure) failure shall constitute a cause for seeking a Show Cause Order from the ABC Board pursuant to D.C. Official Code § 25-447. Unless otherwise noted above, any notices required to be made under this Agreement shall be in writing and mailed via certified mail, return receipt requested, postage prepaid, or hand-delivered, to the other parties to this Agreement at the following addresses. Notice shall be deemed given as of the time of receipt or refusal of receipt:

If to Applicant:

EL Atardecer LLC
3475 14th Street, NW
Washington, DC, 20010
Attn: Jacquelin Acosta
(202) 604-4449

If to Protestants:

Advisory Neighborhood Commission 1A
1380 Monroe Street, NW, #103
Washington, DC, 20010
Attn: Kent Boese, Chairman
202-525-7682

Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the ABC Board or any other enforcement action.

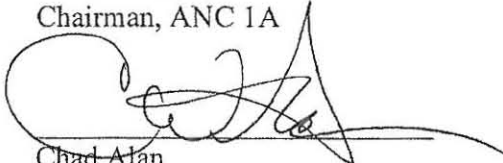
Settlement Agreement between ANC 1A and EL Atardecer (ABRA-092346)

12. **Withdrawal of Protest.** Upon execution of this Agreement by the Parties and its acceptance by the ABC Board, Protestants shall withdraw the Protest.

PROTESTANT:




Kent Boese
Chairman, ANC 1A



Chad Alan
Representative, Group of Five

APPLICANT:



EL Atardecer, LLC
T/A EL Atardecer Restaurant

Blanca Aviles/owner.

By: Printed Name/ Title