

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

In the Matter of:)	
)	
El Tamarindo, Inc.,)	License No. ABRA-071179
t/a El Tamarindo)	Order No. 2016-135
)	
Petition to Terminate or Amend a)	
Settlement Agreement)	
)	
at premises)	
1785 Florida Ave., N.W.)	
Washington, D.C.20009)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

ORDER DENYING PETITION

The official records of the Alcoholic Beverage Control Board reflect that El Tamarindo, Inc., t/a El Tamarindo (Petitioner) entered into a Settlement Agreement with Advisory Neighborhood Commission (ANC) 1C, ANC 2B, and Kalorama Citizens Association (KCA) (collectively referred to as "Signatories") on February 1, 2012.¹ *ABRA Protest File No. 11-PRO-00052*. The Board approved the Settlement Agreement on February 21, 2012. *Board Order No. 2012-078*.

Section 25-446(d)(4) of the District of Columbia Official Code provides:

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:

¹ The Petitioner, ANC 1C, ANC 2B, and Kalorama Citizens Association entered into a Replacement Cooperative Agreement (Settlement Agreement) on February 1, 2012. This Settlement Agreement replaced the settlement agreements the Petitioner entered into with ANC 1C in 1989, 1999, 2008, and 2010.

(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.

In order to meet the good faith requirement of D.C. Official Code § 25-466(d)(4)(A)(ii), the applicant submit a sworn affidavit to the Board at the time of filing the petition to terminate or amend the settlement agreement by fewer than all of parties stating that either:

(A) A meeting occurred between the parties which did not result in agreement; or

(B) The non-applicant parties refused to meet with the applicant.

D.C. OFFICIAL CODE § 25-446(D)(5).

The Board does not find that the Petitioner has made a diligent effort to contact the Signatories to the settlement agreement. The Petitioner did not show that it attempted to contact the Signatories. The Petitioner indicated on the Petition to Terminate or Amend the Settlement Agreement (Petition) that “[a]n email will be sent out to ANC 1C, ANC 2B, [and] KCA.” *Petition to Terminate or Amend Settlement Agreement*, at 2. Communicating with the non-parties to a petition to terminate or amend a settlement agreement is insufficient for meeting the requirement that the applicant make a diligent effort to contact the other parties to the settlement agreement. The law requires that the applicant provide the non-parties to the petition to terminate or amend a settlement agreement with notice prior to filing the petition with the Board so that the parties might attempt to negotiate an amendment or agree to the termination.

The Board also does not find that the Petitioner made a good-faith attempt to negotiate a mutually acceptable amendment to the settlement agreement with the Signatories. The Petitioner indicates on the Petition that he and the Signatories attempted to negotiate an amendment to the Settlement Agreement, but that the attempts were unsuccessful. *Id.* The Petitioner, however, failed to provide the Board with information to support its assertion. *Id.* Thus, the Board does not find that the Petitioner attempted to

negotiate an amendment to the Settlement Agreement or agreement to terminate the agreement.

Further, the Petitioner did not describe in its Petition the circumstances beyond its control or any changes in the neighborhood that require an amendment to the Settlement Agreement. *Id.* The Board, therefore, does not find that the need to terminate the Settlement Agreement is either caused by circumstances beyond the Petitioner's control or due to a change in the neighborhood where the establishment is located.

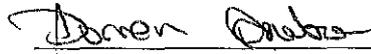
Finally, the Board does not find that terminating the Settlement Agreement would not have an adverse impact on the neighborhood where the establishment is located. The Petitioner indicated on its Petition that its hours of operation and service would remain the same, but that the Settlement Agreement "makes certain processes a bit lengthier [and] has impeded [its] participation in certain events (extended holiday hours) that [are] available to other businesses." *Id.* The Board accepts that the Petitioner would maintain its current daily hours of operation and service, but it is not satisfied that the Petitioner has adequately shown that terminating the Settlement Agreement would not have an adverse impact on the community; particularly where the Petitioner would like to take advantage of District's extended holiday hours for licensed establishments.

The Board, however, notes that given the apparent limited modification sought by the Petitioner to address the extended holiday hour privileges, nothing precludes the parties from negotiating an amendment to the existing Settlement Agreement. The Board is fully supportive of licensees and protestants working together to resolve their concerns and entering into mutually agreeable settlement agreements.

ORDER

Therefore, the Board, on this 6th day of April 2016, **DENIES** the Petition. Copies of this Order shall be sent to the Petitioner.

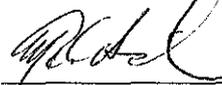
District of Columbia
Alcoholic Beverage Control Board



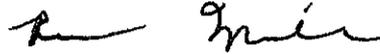
Donovan Anderson, Chairperson



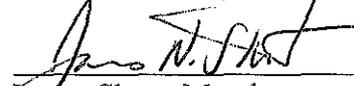
Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, DC 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).