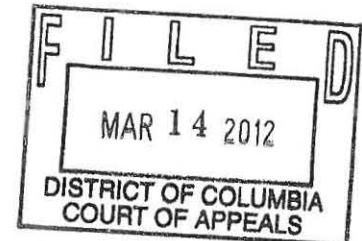


**DISTRICT OF COLUMBIA COURT OF APPEALS**

No. 11-AA-637

PROSPECT DINING, LLC, t/a GEORGE, PETITIONER,

v.



10-PRO-00130

**DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE  
CONTROL BOARD, RESPONDENT.**

Petition for Review of an Order of the  
District of Columbia Alcoholic Beverage Control Board

(Submitted February 14, 2012)

Decided March 14, 2012)

Before GLICKMAN and OBERLY, *Associate Judges*, and BELSON, *Senior Judge*.

**MEMORANDUM OPINION AND JUDGMENT**

PER CURIAM: Petitioner, Prospect Dining, LLC, t/a George (“Petitioner”), seeks review of an order of the District of Columbia Alcoholic Beverage Control Board (“the Board”) denying its petition to terminate a Voluntary Agreement regarding the operation of its business. The Board found, *inter alia*, that petitioner adversely impacted the neighborhood by affecting the neighborhood’s peace, order, quiet, and residential parking, and that petitioner was operating its establishment as a restaurant in name only. On the basis of those findings the Board denied the petition to terminate petitioner’s Voluntary Agreement. We affirm the Board’s order because substantial evidence in the record clearly supports the Board’s findings that terminating the Voluntary Agreement would adversely impact the neighborhood.

**I.**

Petitioner’s Voluntary Agreement with the Advisory Neighborhood Commission 2E contained provisions restricting petitioner’s occupancy to ninety-nine persons and prohibiting its use of the adjoining courtyard’s outdoor patio. Petitioner wished to terminate the agreement so that it could use the patio and maximize its use of its certificate of occupancy which permitted 200 patrons.

The Board found, among other things, that petitioner has been the subject of several complaints. Many involved excessive noise. One resident, Andrew Riguzzi, who lived in front of the building, had had problems with noise levels from the establishment in the past,

especially when the door was open and the music from inside could be heard, but testified that petitioner satisfactorily addressed his complaints about noise. The Board also found that residents of 3251 Prospect Street, N.W., the building where petitioner leased space, complained about noise outside petitioner's establishment after it first opened. Edward Emes, whose residence abuts the building complex containing petitioner's establishment, heard noise inside his home after 10:00 p.m. approximately two to three times per week, but he was uncertain as to the source of the noise. Commissioner Bill Starrels, the Vice-Chairman of ANC 2E, and Co-Chair of the ANC's Alcoholic Beverage Control Committee, testified that the police had to be called upon to deal with the crowds spilling out from petitioner's establishment when it first opened.<sup>1</sup> Commissioner Starrels testified that neighboring restaurant owners have also complained about patrons of petitioner's establishment exiting the establishment and vomiting in the street.

The Board made several other findings with respect to the operation of petitioner's establishment in the neighborhood. It found that "there is heavy [vehicular] traffic in the neighborhood" when the establishment is open and "minimal traffic in the neighborhood when [petitioner's establishment] is closed." Emes testified to this effect, stating that it is very difficult to find parking in the neighborhood. The Metropolitan Police Department ("MPD") was called to petitioner's establishment to investigate whether two crimes had been committed – simple assault and felony assault.<sup>2</sup> The Board also fined petitioner a total of \$1,000 for incidents on September 18, 2009, and September 19, 2009, in which the establishment violated the maximum capacity set forth in the Voluntary Agreement. Moreover, David Chung, a managing partner of petitioner's establishment, acknowledged that on a separate occasion George permitted approximately 135 persons to be present in the establishment at one time.<sup>3</sup>

On the basis of the above findings, the Board, applying D.C. Code § 25-446 (d)(4)

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<sup>1</sup> The Board noted that petitioner's establishment, at times, had a line of persons waiting outside, and that no other establishment in the neighborhood had such a line.

<sup>2</sup> The investigations into the assaults remained open at the time of the Board's hearing on the petition.

<sup>3</sup> Petitioner adduced evidence in support of its petition, including statements from at least one resident of the condominium building in which the establishment was located. Ms. Lee Hefner testified that she had not experienced "any negative affects with regard to peace, order and quiet as a result of [petitioner's establishment]." Petitioner also introduced more than forty "petitions" from Georgetown residents who favored the termination of the Voluntary Agreement.

(Supp. 2011), “denie[d] the Petition because the Petitioner could not demonstrate that removing the Voluntary Agreement will not adversely impact the peace, order, and quiet of the Petitioner’s neighborhood.”<sup>4</sup>

## II.

Petitioner argues that the Board erred in concluding that the termination of the Voluntary Agreement would adversely affect the peace, order, and quiet of the establishment’s neighborhood because

[i]t does not . . . follow logically from the fact of these violations that revocation of the Voluntary Agreement will adversely affect George’s surroundings, because there was no evidence adduced at the hearing that the violations actually adversely affected the peace, order, and quiet of George’s neighborhood, such that it would be reasonable to conclude that termination of the Voluntary Agreement’s occupancy limitation would have such an effect in the future. No connection was made by the Board between the violations and the peace, order, and quiet of George’s surroundings. The Board improperly denied the Petition because it did not analyze whether the Voluntary Agreement’s occupancy limitation actually prevents any adverse effects from the operation of the Petitioner’s establishment from

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<sup>4</sup> The Board also reasoned that terminating the Voluntary Agreement would

lead to an increase in capacity at the establishment that will adversely impact the peace, order, and quiet of the neighborhood because it is unwilling or unable to respect the law, as evidenced by its repeated violations of the Voluntary Agreement, and because the establishment does not appear to focus on food sales as required by D.C. Code § 25-101 (43).

Because the Board stated that it would have reached the same conclusion on the basis of *either* of those reasons, and because the record reflects substantial evidence of the Board’s findings that terminating the Voluntary Agreement will adversely impact the peace, order, and quiet of petitioner’s neighborhood, we need not parse this additional expression of the Board’s conclusions.

impacting George's neighborhood.<sup>5</sup>

Petitioner also argues that the Board misapplied the ABC laws because petitioner's record of compliance is a factor to be considered in the context of the renewal of licenses, but not in the context of the termination of voluntary agreements. Finally, petitioner contends that the Board failed to connect the relevance of the establishment's status as a restaurant to the proceeding with respect to terminating a voluntary agreement.

We review the Board's factual findings "with deference, reversing only if the findings are not based on substantial evidence in the record as a whole." *2461 Corporation v. District of Columbia Alcoholic Beverage Control Bd.*, 950 A.2d 50, 52 (D.C. 2008); *see D.C. Code § 2-510 (a)(3)(E)* (2011). Substantial evidence is "more than a mere scintilla; i.e., such relevant evidence as reasonable minds might accept as adequate to support the conclusion." *2461 Corporation, supra*, 950 A.2d at 52 (internal quotation marks omitted); *see Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1387 (D.C. 1977). "If there is substantial evidence to support the Board's finding, then the mere existence of substantial evidence contrary to that finding does not allow this court to substitute its judgment for that of the Board." *Spevak v. District of Columbia Alcoholic Beverage Control Bd.*, 407 A.2d 549, 554 (D.C. 1979).

The ABC statute provides that the ABC Board "may approve a request . . . to . . . terminate a voluntary agreement for good cause shown if it . . . [finds] based upon sworn evidence: The . . . termination will not have an adverse impact on the neighborhood where the establishment is located as determined under § 25-313." D.C. Code § 25-446 (d)(4)(C) (Supp. 2011). Under § 25-313 (b):

[i]n determining the appropriateness of an establishment, the Board shall consider all relevant evidence of record, including:

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<sup>5</sup> Petitioner also argues that

Mr. Chung's unrebutted testimony was that the number of people waiting in line never exceeded 101. It is reasonable to conclude therefore that if the Voluntary Agreement's occupancy restriction were lifted, people waiting in line outside George would be inside the establishment and noise made by them while waiting in line would not exist, thereby eliminating any potential negative impact on the peace, order, and quiet of the neighborhood.

(1) [t]he effect of the establishment on real property values; (2) [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726; [and] (3) [t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety.

D.C. Code § 25-313 (b) (Supp. 2011).

On the basis of this record, we cannot agree with petitioner that the Board's factual findings were not supported by substantial evidence in the record as a whole or that its conclusion that terminating the Voluntary Agreement would adversely affect the neighborhood was error. *See D.C. Code § 25-446; 2461 Corporation, supra*, 950 A.2d at 52. The record contains substantial evidence that petitioner, with its present occupancy limit of ninety-nine persons, repeatedly subjected the neighborhood to excessive noise that adversely affected the peace, order, and quiet of the neighborhood and gave rise to complaints by neighbors, and occasionally (and unlawfully) exceeded its occupancy limit in violation of the Voluntary Agreement. *See D.C. Code § 25-313 (b); cf. In re Don Juan Restaurant, Inc.*, Board Order No. 2011-166, paras. 72-81 (D.C.A.B.C.B. Mar. 23, 2011) (terminating voluntary agreement, in part, because investigators found nothing that would indicate that business would have adverse impact on peace, order, and quiet). Petitioner's establishment also adversely affected neighborhood parking needs and vehicular traffic. *See D.C. Code § 25-313 (b); cf. In re AMDuffy, LLC*, Board Order No. 2011-301, paras. 32-33 (D.C.A.B.C.B. July 6, 2011) (terminating voluntary agreement because, in part, protestant had not proven that restaurant was source of neighborhood's limited parking); *In re Jaime T. Carrillo*, Board Order No. 2011-143, paras. 62-76 (D.C.A.B.C.B. Feb. 23, 2011) (same). The record evidence also indicates that petitioner's establishment adversely affected the neighborhood peace on at least two separate occasions when the MPD were called to investigate complaints of assault at the establishment. Thus, because there is substantial evidence supporting the Board's conclusions, "the mere existence of substantial evidence contrary to that finding does not allow this court to substitute its judgment for that of the Board." *Spevak, supra*, 407 A.2d at 554.

Finally, for the reasons stated above, the record supports the conclusion that terminating the Voluntary Agreement and permitting up to 200 patrons to be present in the establishment at any one time would have an adverse impact on the neighborhood by affecting the peace, order, and quiet of the neighborhood and further reducing residential parking. For the foregoing reasons, it is

ORDERED and ADJUDGED that the order on appeal herein, is hereby affirmed.

ENTERED BY THE DIRECTION OF THE COURT:



Julio A. Castillo  
Clerk of the Court

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