

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

In the Matter of:)		
)		
A and A, LLC)	Case Nos.:	14-PRO-00099
t/a Georgia Line Convenience Store)		14-PRO-00101
)	License No:	091196
Application to Renew a)	Order No:	2015-305
Retailer's Class B License)		
)		
at premises)		
5125 Georgia Avenue, N.W.)		
Washington, D.C. 20011)		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: A and A, LLC, t/a Georgia Line Convenience Store, Applicant

W. Jameson Fox, Counsel, of the law firm of Martin McMahon & Associates, on behalf of the Applicant

David Sheon, Designated Representative, on behalf of a Group of Five or More Residents and Property Owners and Advisory Neighborhood Commission (ANC) 4D, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) hereby denies the Petition to Terminate a Settlement Agreement (Petition), but approves the Application to Renew a Retailer's Class B

License filed by A and A, LLC, t/a Georgia Line Convenience Store, (hereinafter “Applicant” or “Georgia Line”). In short, the denial of the Petition is warranted, because the record shows that Georgia Line repeatedly violated the terms of its license and its settlement agreement by selling alcohol on Sundays. Nevertheless, the Board renews the license, because the violations observed by witnesses do not merit the extreme remedy of revocation. The Board’s reasoning is explained further below.

Procedural Background

Georgia Line filed an Application to Renew a Retailer’s Class B License (Application) and a timely Petition to Terminate a Settlement Agreement (Petition) requesting that the Board renew its license and terminate a settlement agreement entered into with various protestants.

The Notice of Public Hearing advertising Georgia Line’s Renewal Application was posted on October 31, 2014, and informed the public that objections to the Application or Petition could be filed on or before December 15, 2014. *ABRA Protest File No. 14-PRO-00099*, Notice of Public Hearing; *ABRA Protest File No. 14-PRO-00101*, Notice of Public Hearing [Notices]. The Alcoholic Beverage Regulation Administration (ABRA) received protest letters from a Group of Five or More Residents and Property Owners (Sheon Group) and Advisory Neighborhood Commission (ANC) 4D (ANC) (collectively the “Protestants”). *ABRA Protest File No. 14-PRO-00099*, Roll Call Hearing Results.

The Board recognizes that an ANC’s properly adopted written recommendations are entitled to great weight from the Board. *See Foggy Bottom Ass’n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982); D.C. Official Code §§ 1-309.10(d); 25-609 (West Supp. 2015). Accordingly, the Board “must elaborate, with precision, its response to the ANC[’s] issues and concerns.” *Foggy Bottom Ass’n*, 445 A.2d at 646. The Board notes that it received a properly adopted written recommendation from ANC 4D. The ANC’s issues and concerns shall be addressed by the Board in its Conclusions of Law, below.

The Board also reviewed the Petition and found that the Petition satisfied D.C. Official Code § 25-446(d)(2), because it was filed during the Petitioner’s renewal period and after four years from the date the Board originally approved the settlement agreement at issue in this matter. The Petition also contained the affidavit required by § 25-446(d)(5). The Alcoholic Beverage Regulation Administration (ABRA) then provided notice of the Petition to the parties to the settlement agreement and the public in accordance with District of Columbia (D.C.) Official Code § 25-446(d)(3).

In Board Order No. 2015-055, based on the similarity of the facts and legal issues surrounding the Application and Petition, the Board consolidated the matters into a single hearing. *In re A and A, LLC, t/a Georgia Line Convenience Store*, Case Nos. 14-PRO-00099, 14-PRO-00101, Board Order No. 2015-055 (D.C.A.B.C.B. Feb. 18, 2015) (Sua Sponte Order to Consolidate Protests).

The parties came before the Board’s Agent for a Roll Call Hearing on December 29, 2014, where all of the above-mentioned objectors were granted standing to protest the

Application. On February 11, 2015, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on April 22, 2015.

Issues Under Review

There are two issues that must be addressed by the Board in this Order. First, the Board must determine whether the Applicant's settlement agreement merits termination in accordance with D.C. Official Code § 25-446.

Second, based on the issues raised by the Protestants, the Board may only grant the Application if the Board finds that the request will not have an adverse impact on the peace, order, and quiet of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2015).

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:¹

I. Background

1. Georgia Line has submitted an Application to Renew a Retailer's Class B License at 5125 Georgia Avenue, N.W., Washington, D.C., and a Petition to Terminate its Settlement Agreement *Notices*.
2. ABRA Investigator Dorshae Demby investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 14-PRO-00099, Protest Report* (Apr. 2015) [*Protest Report*]. The proposed establishment is located in a C-2-A zone. *Protest Report*, at 2. There are no schools located within 400 feet of the establishment. *Id.* at 3.
3. Georgia Line has hours of operation that vary from its hours of alcoholic beverage sales. Georgia Line's hours of operation are as follows: 6:00 a.m. to 10:00 p.m. seven days per week. *Id.* at 4. Alternatively, its hours of alcoholic beverage sales run from 9:00 a.m. to 10:00 p.m., Monday through Saturday. *Id.* The establishment cannot sell alcohol on Sundays based on the hours listed on its license. *Id.*
4. Ten licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 2. Five of the ten stores have permission to operate on Sundays. *Tr.*, 4/2215 at 28.
5. ABRA Investigators monitored the establishment between February 20, 2015 and April 14, 2015. *Transcript (Tr.)*, April 22, 2015 at 26-27. Georgia Line is a one-floor retail establishment that has three rows of grocery aisles and refrigerator units offering alcoholic and

¹ The Protestants in this case raised the issue of an alleged bribe in this matter. There was insufficient evidence in the record to establish the exact circumstances that surrounded the offer; therefore, the Board declines, at this time, to make a determination under D.C. Official Code § 25-301(a)(1) that Georgia Line is disqualified from licensure.

non-alcoholic beverages. *Id.* at 27-28. The cash register is located behind a Plexiglas window. *Id.* at 28. ABRA investigators observed no violations during the observation period, but did not regularly visit the establishment on a Sunday. *Protest Report*, at 4.

6. Investigator Demby visited the establishment on Sunday, August 10, 2015, based on an email complaint accusing the establishment of illegally selling alcohol on Sunday. *Id.* at 31-2. Before entering the establishment, he monitored the exterior of the premises for ten minutes. *Id.* at 32. He then entered the establishment in an undercover capacity and picked up some beer from inside the store. *Id.* at 32. He brought the beer to the register, which was attended by two males. *Id.* at 33. Investigator Demby purchased the beer from the men at the register, and then returned to ABRA's headquarters in order to report the violation of the establishment's settlement agreement and license. *Id.*

II. Settlement Agreement

7. Georgia Line has had a settlement agreement attached to its license since 2004. *In re Georgia Line, Inc., t/a Georgia Line Market*, Application No. 24360-03/067P, Board Order No. 2004-19, 1-2 (D.C.A.B.C.B. Feb. 11, 2004). Among other provisions, the settlement agreement prohibits Georgia Line from selling alcohol on Sundays. *Id.* at *Voluntary Agreement*, § 4.

III. Alemtsehay Tassew

8. Alemtsehay Tassew owns Georgia Line with her sister. *Id.* at 42. She has owned the store since February 2013. *Id.*

9. Ms. Tassew noted that she is unable to sell alcohol on Sundays, even though Sunday sales are now permitted in the District. *Id.* at 44. Based on this restriction, she feels that she is losing money to the competition. *Id.* at 45-46. She has no other objection to the settlement agreement. *Id.* at 72.

10. Ms. Tassew discussed a stove that had been located outside the establishment. *Id.* at 50-51. She admitted that a stove was located outside the establishment, but indicated that the stove belonged to someone else. *Id.* at 51-52, 76.

11. Ms. Tassew indicated that she spoke to some of the protestants in order to discuss the settlement agreement. *Id.* at 54-56. She spoke to Ms. Wallace about the settlement agreement, but Ms. Wallace was not interested in negotiating an amendment. *Id.* She also discussed the agreement with Ms. Roy-Elliott, but she did not agree to any changes. *Id.*

IV. Tigit Tadesse

12. Tigit Tadesse is related to the owners of Georgia Line. *Id.* at 83. She has never observed trash or litter outside the establishment. *Id.* at 84.

V. Wondie Tiruneh

13. Wondie Tiruneh resides at 5117 Georgia Avenue, N.W. *Id.* at 92. He usually patronizes Georgia Line on a daily basis. *Id.* Based on his observations, he has found Georgia Line to be a clean, tidy, and quiet establishment. *Id.* at 93. He also never observed people loitering outside the establishment. *Id.*

VI. Joseph Kelley

14. Joseph Kelley lives in Ward 4. *Id.* at 96, 107. In his experience, Georgia Line is clean and neat. *Id.* at 97.

VII. David Sheon

15. ANC Commissioner David Sheon represents Single Member District 4D04. *Id.* at 124. He noted that the stove was removed from outside the premises four days after he observed it. *Id.* at 139.

VIII. Tawanna Roy-Elliot

16. Twanna Roy-Elliot lives in the neighborhood. *Id.* at 145. She spoke to the owner of Georgia Line over the phone and they agreed to meet at the owner's store. *Id.* at 146. Ms. Roy-Elliot appeared at the store to meet, but the store owner never showed up. *Id.*

17. Ms. Roy-Elliot complained about trash in front of the establishment. *Id.* at 148. She noted that there is often trash in front of the establishment. *Id.*

18. Ms. Roy-Elliot opposes allowing the store to sell alcohol on Sundays. *Id.* She believes there are enough establishments that sell alcohol on Sundays. *Id.* at 148, 156. She also noted that the presence of many liquor stores in the neighborhoods encourages trash and loitering. *Id.* at 148. Furthermore, she believes that if the establishment sold alcohol on Sunday, it would attract more patrons to the block. *Id.* at 158.

19. Ms. Roy-Elliot's husband was able to buy alcohol at the establishment on a Sunday in the spring of 2014. *Id.* at 149-50.

IX. Annie Wallace

20. Ms. Wallace admitted that the owner made a request to discuss the termination of the settlement agreement. *Id.* at 177. She also admitted that the owner attempted to discuss the issue with her on at least three occasions. *Id.* at 178. Ms. Wallace asked the owner to speak to Ms. Roy-Elliot about Georgia Line's issues. *Id.* at 179.

21. Ms. Wallace's son previously bought alcohol from the store on a Sunday in 2014. *Id.* at 182.

X. Donna Brockington

22. Donna Brockington previously served as the chair of ANC 4D. *Id.* at 198. She noted that the trash bin in front of the store is often overflowing, and the front is sometime not kept neat and clean. *Id.* at 200. Ms. Brockington is also tired of drunk people loitering on her block and drinking beer and wine. *Id.* at 201.

23. Ms. Brockington argued that the owner is not following the Sunday sales restriction contained in the agreement. *Id.* at 201-02. Specifically, she has observed people living in her building go to Georgia Line and purchase alcohol on Sundays. *Id.* at 202, 205-06. On one occasion, she entered the store and observed that two male employees were selling alcohol to the store's customers on a Sunday. *Id.* at 210, 212, 220-21.

CONCLUSIONS OF LAW

24. According to the D.C. Administrative Procedure Act (DCAPA), “. . . the proponent of a rule or order shall have the burden of proof.” D.C. Official Code § 2-509(b). The Board shall only rely on “reliable” and “probative evidence” and base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2015). In this case, the Applicant bears the initial burden of demonstrating that it satisfies all legal requirements related to its Petition and renewal, because it is the proponent of both requests. *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 195, 197 (D.C. 1979); *Tiger Wyk Ltd., Inc. v. D.C. Alcoholic Beverage Control Bd.*, 825 A.2d 303, 310-11 (D.C. 2003) *cit*ing *Haight v. District of Columbia Alcoholic Beverage Control Board*, 439 A.2d 487, 493 (D.C.1981).

I. GEORGIA LINE'S REPEATED FAILURE TO COMPLY WITH THE SUNDAY SALE PROHIBITION IN ITS SETTLEMENT AGREEMENT INDICATES THAT AN ADVERSE IMPACT WILL OCCUR IF THE BOARD TERMINATES THE AGREEMENT.

25. Consistent with the Board's precedent, the Petition is denied, because the record shows that Georgia Line repeatedly violated the terms of its license and its settlement agreement by selling alcohol on Sundays.

26. Under D.C. Official Code § 25-446(d)(1), “[u]nless a shorter term is agreed upon by the parties, a settlement agreement shall run for the term of a license, including renewal periods, unless it is terminated or amended in writing by the parties and the termination or amendment is approved by the Board. D.C. Official Code § 25-446(d)(1). Accordingly, in pertinent part,

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 . . . the following finding[] based upon sworn evidence: . . .

- (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.

D.C. Official Code § 25-446(d)(4), (C).

27. In *George*, the Board denied a restaurant’s petition to terminate a settlement agreement based on a showing of repeated violations of the agreement. *In re Prospect Dining, LLC, t/a George*, Case No. 10-PRO-00130, Board Order No. 2011-178, 1, ¶¶ 39, 44-45 (D.C.A.B.C.B., May 4, 2011). In that decision, the Board indicated that “. . . compliance with the ABC laws i[s] an important aspect of peace, order, and quiet . . .” *Id.* at ¶ 42.² Furthermore, the Board found that repeated violations of the law indicate “. . . that a licensee will not or is incapable of respecting the law and that the licensee will adversely impact its neighbors.” *Id.*

28. Relevant to this case, under the law, Georgia Line is required to abide by the terms of its settlement agreement and the hours approved by the Board. D.C. Official Code §§ 25-446(e)(e), 25-724, 25-823(1), 25-823(6). Based on the terms of Georgia Line’s license and its settlement agreement, Georgia Line cannot sell alcohol on Sundays. *Supra*, at ¶¶ 3, 7. Yet, the credible evidence provided by the testimony of Investigator Demby, Ms. Roy-Elliot, and Ms. Wallace shows that Georgia Line violates this prohibition on a regular basis by selling alcohol on Sundays. *Supra*, at ¶¶ 6, 19, 21. Under these circumstances, similar to the case in *George*, the Board can only conclude that terminating the agreement would have an adverse impact on the neighborhood based on Georgia Line’s failure to respect the law and its agreements with the community. Therefore, the Board denies the Petition.³

II. GEORGIA LINE’S FAILURE TO COMPLY WITH ITS SETTLEMENT DOES NOT MERIT THE EXTREME REMEDY OF REVOCATION.

29. The Board may approve an Application to Renew a Retailer’s Class B License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2015). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2015).

30. Under the appropriateness test, “. . . the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located . . .” D.C. Official Code § 25-311(a).

² See also *In re 19th and K, Inc., t/a Ozio Martini & Cigar Lounge*, Case No. 13-PRO-00151, Board Order No. 2014-366, ¶ 21 (D.C.A.B.C.B. Aug. 15, 2014) (saying the term “order” in § 25-313(b)(2) allows the Board to consider “. . . whether the licensee’s operations will comply with the District’s alcohol laws . . .”).

³ Based on this determination, the issue of whether Georgia Line satisfied parts (A) and (B) of § 25-446(d)(4) are moot, and the Board does not address them in this Order.

31. “In determining the appropriateness of an establishment, the Board shall consider . . . [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.” D.C. Official Code § 25-313(b)(2); *see also* D.C. Official Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider “. . . noise, rowdiness, loitering, litter, and criminal activity.” 23 DCMR § 400.1(a) (West Supp. 2015).

32. In the case of renewal, § 25-315 also requires the Board to consider “. . . the licensee's record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license during the period of licensure, including the terms of a settlement agreement.” D.C. Official Code § 25-315(b)(1); *N. Lincoln Park Neighborhood Ass'n v. Alcoholic Beverage Control Bd.*, 666 A.2d 63, 67 (D.C. 1995). In this case, multiple witnesses called by the Protestants indicated that revocation was not an appropriate remedy. *Tr.*, 4/22/2015 at 160, 183. The record also lacks compelling evidence that the establishment is generating excessive noise, rowdiness, serious and consistent trash or litter, and criminal activity. Consequently, based on this record, the Board is inclined to permit Georgia Line to demonstrate that it has the ability to comply with its settlement agreement during its next licensure period. As such, the Board approves the renewal application filed by Georgia Line.

III. THE BOARD HAS SATISFIED THE GREAT WEIGHT REQUIREMENT BY ADDRESSING ANC 4D'S ISSUES AND CONCERNS.

33. ANC 4D's written recommendation submitted in accordance with D.C. Official Code § 25-609(a) indicated that its protest was based on concerns regarding Georgia Line Convenience Store's impact on peace, order, and quiet. The Board notes that it specifically addressed these concerns in Sections I and II of this Order.

IV. THE APPLICATION SATISFIES ALL REMAINING REQUIREMENTS IMPOSED BY TITLE 25.

34. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants in their initial protest. *See Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) (“The Board's regulations require findings only on contested issues of fact.”); 23 DCMR § 1718.2 (West Supp. 2015). Accordingly, based on the Board's review of the Application and the record, the Applicant has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

ORDER

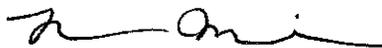
Therefore, the Board, on this 17th day of June 2015, hereby **APPROVES** the Application to Renew a Retailer's Class B License at premises 5125 Georgia Avenue, N.W. filed by A and A, LLC, t/a Georgia Line Convenience Store.

IT IS FURTHER ORDERED that the Petition is **DENIED**.

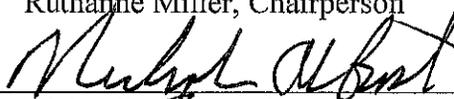
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver a copy of this order to the Applicant, ANC 4D, and the Sheon Group.

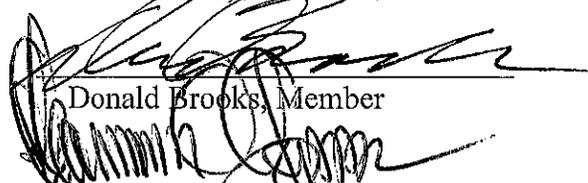
District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



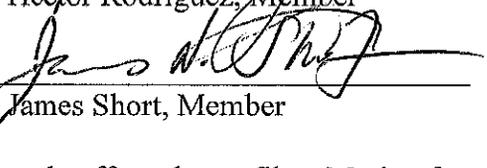
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Pursuant to 23 DCMR § 1719.1, 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, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 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 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).