

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

**In the Matter of:** )  
 )  
Ghana Café, LLC )  
t/a Ghana Café )  
 )  
Application for Substantial Change to a )  
Retailer's Class CR License )  
 )  
at premises )  
1336 14th Street, N.W. )  
Washington, D.C. 20005 )  
 )

Case No.: 13-PRO-00146  
License No. ABRA-082751  
Order No. 2014-047

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

**ALSO PRESENT:** Ghana Café, LLC, t/a Ghana Café , Applicant

John Fanning, Commissioner, Advisory Neighborhood Commission  
(ANC) 2F, Protestant

Michael Hibey, Esq., on behalf of a Group of Five or More  
Individuals, Protestant

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

**ORDER DENYING APPLICANT'S MOTION FOR REINSTATEMENT AND  
PETITION TO TERMINATE SETTLEMENT AGREEMENT**

Ghana Café, LLC, t/a Ghana Café (Applicant) filed an Application for a Substantial Change requesting an Entertainment Endorsement, which was protested by a Group of Five or More Individuals and Advisory Neighborhood Commission (ANC) 2B. The parties proceeded to a Protest Status Hearing before the Alcoholic Beverage Control Board (Board) on January 15, 2014

The official records of the Alcoholic Beverage Regulation Administration (ABRA) show that Ghana Café, LLC, t/a Ghana Café (Petitioner), entered into a Settlement Agreement with Advisory Neighborhood Commission 2F, The Willison Condominium Association, and various individual parties, which was approved by the Board on October

28, 2009. In re Ghana Café, LLC, t/a Ghana Café, License No. 82751, Board Order No. 2009-255, 1 (D.C.A.B.C.B. Oct. 28, 2009). Section 9 of the agreement prevents the Applicant from possessing an entertainment endorsement; therefore, the Board dismissed the protest at the Protest Status Hearing. Id. at Settlement Agreement, § 9 (“Applicant agrees that it shall not seek an entertainment endorsement to its license . . .”).

Subsequently, before the issuance of a written order by the Board, the Applicant filed a petition requesting termination of the settlement agreement and reinstatement.<sup>1</sup> The Board emphasizes that it has not issued an order, because there was only a short time between the dismissal and the instant motion.

The Board denies the Applicant’s request to terminate its settlement agreement, as the Board previously did on June 8, 2013, in Board Order No. 2013-253, because it is improper and untimely.

The request is improper during the current protest, because a petition to terminate requires public notice under D.C. Official Code § 25-446(d)(3) in order to be granted. Therefore, the Board cannot grant the request during an unrelated protest proceeding, as is the case here.

The Board also notes that the request is untimely and cannot be granted until the Applicant’s next renewal period. D.C. Official Code § 25-446(d)(2) provides that “The Board may accept an application to amend or terminate a settlement agreement by fewer than all parties in the following circumstances: (A) During the license’s renewal period; and (B) After 4 years from the date of the Board’s decision initially approving the settlement agreement.” D.C. Official Code § 25-446(d)(2). Here, the Applicant’s renewal period expired on April 1, 2013; therefore, it is not eligible for termination until its next renewal period. In re Ghana Café, LLC, t/a Ghana Café, Board Order No. 2013-253 (D.C.A.B.C.B. Jun. 8, 2013).

The Applicant further argues that the other parties have not fulfilled their obligations under the agreement. *Applicant’s Motion*, at ¶ 14. Nevertheless, the Board does not have the power to compel a non-licensed party to a settlement agreement to comply with the terms of the agreement. In re Ghana Café, LLC, t/a Ghana Café, Board Order No. 2013-253 (D.C.A.B.C.B. Oct. 5, 2011). Nor, under § 25-446, is the failure of an unlicensed party to take an action required by a settlement agreement grounds for termination of the agreement. Instead, the Applicant’s only option, if it seeks to pursue its allegations further, is to seek a remedy, such as performance, from the court system against the other parties to the agreement.<sup>2</sup> Thus, the Board must abide by the Settlement Agreement and has no ground on which the Board may reinstate the Application.

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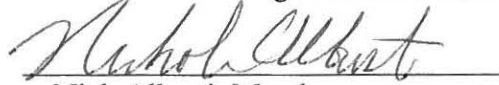
<sup>1</sup> The Board notes that the Applicant failed to serve the other parties to the protest with this motion; however, the Board denies the motion on its face for the reasons stated in this Order.

<sup>2</sup> Hypothetically, if the Board took the position taken by the Applicant, the Board would be forced to revoke its license, because the underlying order granting the license would have to be vacated, and the Board cannot issue a license without determining appropriateness.

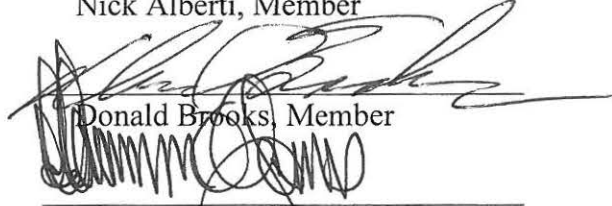
## **ORDER**

The Board does hereby, this 5th day of February 2014, **DENY** the motion submitted by Ghana Café, LLC, t/a Ghana Café. Copies of this Order shall be sent to the Applicant and the Protestants.

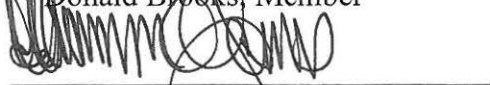
District of Columbia  
Alcoholic Beverage Control Board



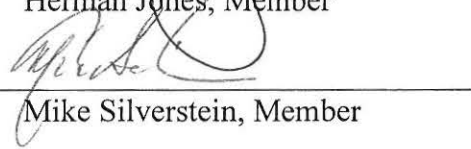
Nick Alberti, Member



Donald Brooks, Member

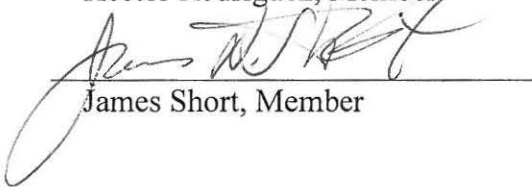


Herman Jones, Member



Mike Silverstein, Member

Hector Rodriguez, Member



James Short, Member

Pursuant to D.C. Official Code § 25-433, 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 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 20009.