THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)		
	)		
Green Island Heaven and Hell, Inc.	)	Case Number:	10-PRO-00178
t/a Green Island Café/Heaven and Hell	)	License Number:	074503
	)	Order:	2011-136
Petition to Terminate a	)		
Voluntary Agreement	)		
	)		
at premises	)		
2327 18th Street, N.W.	)		
Washington, D.C. 20009	)		
	)		

Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven and Hell (Petitioner)

Emanuel N. Mpras, Esq., on behalf of the Petitioner

Commissioner Wilson Reynolds, Advisory Neighborhood Commission (ANC) 1C, Protestant

Denis James, on behalf of the Kalorama Citizens Association, Protestant

Carol Erting, on behalf of A Group of Five or More Individuals, Protestant

BEFORE: Charles Brodsky, Chairperson
Mital M. Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ORDER DENYING PROTESTANTS' MOTION TO DISMISS

A Petition to Terminate a Voluntary Agreement (Petition) was filed by Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven and Hell (Petitioner), at premises 2327 18th Street, N.W., Washington, D.C. The Petition was protested by A Group of Five or More Individuals, represented by Carol Erting; the Kalorama Citizens Association, represented by Denis James; and ANC 1C, represented by Commissioner Wilson Reynolds (collectively the "Protestants"). The Application came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on January 3, 2011, and a Status Hearing on February 23, 2011, in accordance with D.C. Official Code § 25-601 (2001). The Protest Hearing is scheduled for April 6, 2011, at 4:00 p.m.

The Protestants submitted a Motion to Dismiss the Petition and the Petitioner replied on January 31, 2011.

The Protestants argue that the Petition should be dismissed for two reasons. First, the Protestants argue that the Petition does not satisfy D.C. Code § 25-446(d)(2) because it was not filed after four years from the date the Board initially approved the Voluntary Agreement. D.C. Code § 25-446(d)(2)(B) (2001). The Protestants argue that the Board should not consider the fact that the Voluntary Agreement was initially approved in 2005 and instead determine that the amendment to the Voluntary Agreement approved on July 31, 2008, moves the initial approval date to that time. Second, the Protestants argue that the Petitioner did not negotiate in good faith under D.C. Code § 25-446(d)(4)(A)(i)-(ii).

The Board summarily dismisses the Motion to Dismiss filed by the Protestants. The Board's most recent precedent demonstrates decisively that the Protestants' interpretation of the law is incorrect.

First, the Board has previously held that an amendment to a Voluntary Agreement does not change the initial approval date for the purposes of terminating a Voluntary Agreement under D.C. Code § 25-446(d)(2). *See Board Order No. 2010-467, 2; Board Order No. 2010-468, 2; Board Order No. 2010-469, 2.* As a result, because the Petitioner's Voluntary Agreement was approved approximately 6 years ago, the Petitioner is entitled to request that the Board terminate its Voluntary Agreement.

Second, the Protestant is incorrect that the Petitioner was obligated to negotiate in good faith under § 25-446. Under the ABC law,

> The Board may approve a request by fewer than all parties to amend or terminate a voluntary agreement for good cause shown if it makes each of the following findings based upon sworn evidence:
>
> (A) (i) The applicant seeking the amendment has made a diligent effort to locate all other parties to the voluntary 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 voluntary 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. D.C. Code § 25-446 (2001).

Board Order No. 2010-533 determined that

> . . . . § 25-446 distinguishes between a party that seeks to amend a Voluntary Agreement versus a party that seeks. . . termination. Indeed, this point is emphasized by the fact that neither § 25-446(d)(4)(A)(i)-(ii) or § 25-446(d)(4)(B) mention the word "terminate" or "termination" while § 25-446(4)(C) does. [There is no reason for] the Board [to] deviate from the plain language of the statute. Therefore, the Board finds that the Licensee does not have to satisfy § 25-

446(4)(A)(i)-(ii) or § 25-446(4)(B) in order to terminate its Voluntary Agreement. *Board Order No. 2010-533, para. 49.*

Consequently, because the Petitioner is requesting that the Board terminate its Voluntary Agreement, the Petitioner is not obligated to fulfill the good faith requirement or that there are circumstances beyond the Petitioner's control or a change in the neighborhood.

Based on these reasons, the Protestants' Motion to Dismiss is denied.

ORDER

The Board does hereby, this 23rd day of February 2011, **DENIES** the Motion to Dismiss submitted by the Protestants. Copies of this Order shall be delivered to the Petitioner, Carol Erting, the Kalorama Citizens Association, and ANC 1C.

District of Columbia
Alcoholic Beverage Control Board

Charles Brodsky, Chairperson

Mital M. Gandhi, Member

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Calvin Nophlin, Member

Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (2008), 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, 1250 U Street, N.W., 3rd Floor, 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. 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).