

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

In the Matter of:)		
)		
Logan Circle Spectrum, LLC)	License Number:	60588
)	Order:	2011-221
<i>Involuntary Transfer</i>)		
)		
at premises)		
1435 P Street, N.W.)		
Washington, D.C. 20005)		

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

ORDER DENYING MOTION TO SET ASIDE INVOLUNTARY TRANSFER

Logan Circle Spectrum, LLC (Logan Circle), filed a Motion with the Board on April 29, 2011, requesting that the Alcoholic Beverage Control Board (Board) vacate the involuntarily transfer of Logan Circle’s ABC license, ABRA License No. 60588, to Second Home, LLC (Second Home), under D.C. Code § 25-361 (2001). Logan Circle then supplemented its original filing on May 5, 2011. Second Home filed a reply to Logan Circle’s Motion on May 9, 2011. Logan Circle subsequently filed a reply to Second Home’s reply on May 11, 2011, which prompted Second Home to file a surreply on May 11, 2011, as well.

On December 20, 2010, the United States Bankruptcy Court for the Southern District of Florida approved a settlement agreement between Logan Circle and Second Home, which, in pertinent part, states: “In exchange for the foregoing, the parties . . . agree to a mutual release of all claims . . .” *Motion to Set Aside Involuntary Transfer, Exh. A, 3*. The agreement further states that “The Debtor will execute all documents necessary to convey the alcohol license to Hartlet.” *Motion to Set Aside Involuntary Transfer, Exh. A, 1*. The court then wrote in its Order that “The Settlement between the Debtor and Hartlet Enterprises, Inc. is approved under the terms as stated in the Motion including transfer of the alcohol license to Hartlet Enterprises, Inc. or its assigns.” *Supplement to Motion to Set Aside Involuntary Transfer, Exh. A, 2*.

In brief, Logan Circle argues that the Board should not have transferred Logan Circle’s ABC license to Second Home. According to Logan Circle, Second Home is not a “bona fide purchaser” and the Bankruptcy Court Order approving the parties’ settlement agreement does not qualify as a sale under § 25-361. Further, Logan Circle argues that the

settlement agreement between Logan Circle and Second Home contemplated a voluntary transfer of the ABC license, not an involuntary transfer.

In reply, Second Home asks the Board to summarily reject all of Logan Circle's arguments. *Second Home, LLC's Opposition to Logan Circle Spectrum, LLC's Motion to Set Aside Involuntary Transfer, 2*. Second Home argues that jurisdiction in this matter rests with the Bankruptcy Court and not the Board. Further, Second Home argues that the settlement agreement does not mandate that the transfer of the liquor license must occur through a voluntary transfer. Finally, Second Home argues that the Board properly transferred the ABC license to Second Home under § 25-361.

We find that the involuntary transfer of Logan Circle's ABC license was valid under § 25-361 and that the settlement agreement did not mandate that the transfer of the ABC license occur voluntarily.

I. Jurisdiction

As a preliminary matter, the parties have raised arguments regarding the Board's jurisdiction. In response, we emphasize that the Board's jurisdiction in this matter is limited. Under § 25-361, the Board has the right to determine whether an order constitutes a sale to a bona fide purchaser "conducted upon the order of a court of competent jurisdiction." §§ 25-361(a), 25-361(a)(4). As such, the Board, in its Order below, will solely address the matters that fall within its jurisdiction.

II. Validity of the Involuntary Transfer

The Board concludes that Second Home is a bona fide purchaser and the settlement agreement constitutes a sale under § 25-361.

The Board is empowered to involuntarily transfer an ABC license "upon the request of a bona fide purchaser of the license who made the purchase at . . . [a]ny other sale conducted upon the order of a court of competent jurisdiction." D.C. Code §§ 25-361(a), 25-361(a)(4) (2001). The term "sale" is defined as "offering for sale, keeping for sale, manufacturing for sale, soliciting orders for sale, trafficking in, importing, exporting, bartering, delivering for value or in any way other than by purely gratuitously transferring." D.C. Code 25-101(45) (2001).

We find that the transfer of the ABC license to Second Home is valid. As a preliminary matter, the United States Bankruptcy Court for the Southern District of Florida is a "court of competent jurisdiction" contemplated by § 25-361(a) and has the power to order the transfer of Logan Circle's ABC license. We further note that although no money may have been exchanged between Logan Circle and Second Home as part of the settlement agreement, the parties mutually released each other from all claims against one another. Such agreements fall under the definition of a sale because they constitute a "delivery for value;" namely, in this case, Logan Circle is, in part, exchanging the liquor license for a release from liability from Hartlet. See e.g., Bolling Federal Credit Union v. Cumis Ins. Soc., Inc., 475 A.2d 382, 385 (D.C. 1984) ("A release is a form of contract"); GLM Partnership v. Hartford Cas. Ins. Co., 753, A.2d 995, 999 (2000) citing Interdonato v. Interdonato, 521 A.2d 1124, 1134 (D.C.1987) ("[A] release, like any other contract,

must be supported by sufficient consideration, and the consideration is not sufficient unless the releasor receives something of value to which he or she had no previous right.”). Lastly, although there is no definition of a “bona fide purchaser” in the ABC laws, we deem Second Home to be such a purchaser because the promise to release Logan Circle from liability has value and was given to Logan Circle by Second Home in good faith in exchange for Logan Circle’s ABC license. As such, the involuntary transfer of Logan Circle’s ABC license was valid under § 25-361.

III. Interpretation of the Settlement Agreement

The Board also concludes that the settlement agreement does not mandate that the transfer of Logan Circle’s ABC license occur through a voluntary transfer.

A plain reading of the settlement agreement does not mandate that the transfer of the license occur voluntarily and does not preclude Second Home from effecting an involuntary transfer of the ABC license. The clause ordering Logan Circle “[to] execute all documents necessary to convey the alcohol license to Hartlet,” is a promise by Logan Circle to cooperate and make efforts to expedite the transfer process, nothing more. *Motion to Set Aside Involuntary Transfer, Exh. A, 1*. The Board also rejects Logan Circle’s arguments that the clause making Logan Circle “solely responsible for any transfer charges,” mandates a voluntary transfer. Instead, the provision merely orders Logan Circle to cover the transfer costs, whatever they may be. As such, the Board finds that Second Home was entitled to request an involuntary transfer under the terms of the agreement.

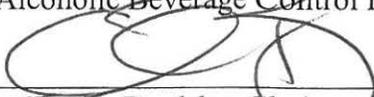
IV. Conclusion

Consequently, for the foregoing reasons, the Board finds that Logan Circle’s arguments are without merit.

ORDER

Therefore, it is hereby **ORDERED** on this 25th day of May 2011, that the Motion to Set Aside Involuntary Transfer filed by Logan Circle Specturm, LLC, t/a Halo, is **DENIED**.

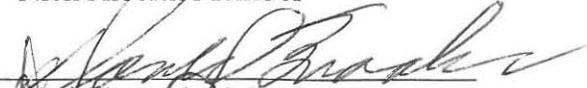
District of Columbia
Alcoholic Beverage Control Board



Charles Brodsky, Chairperson



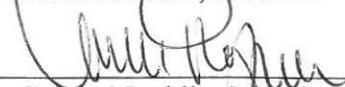
Nick Alberti, Member



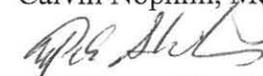
Donald Brooks, Member



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, 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, 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).