THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
2461 Corporation t/a Madam's Organ	)	License Number: 025273 Case Number: 11-PRO-00016 Order Number: 2012-250
Petition to Terminate a Voluntary Agreement for a Retailer's Class CT License	)	
at premises 2461 18th Street, N.W. Washington, D.C. 20009	)	

ALSO PRESENT: 2461 Corporation, t/a Madam's Organ, Petitioner

Richard Bianco, Esq., of the firm Paul Strauss & Associates, P.C., on behalf of the Applicant

Oliver Kamanda, Commissioner, Advisory Neighborhood Commission (ANC) 1C, Protestant

Denis James, President, Kalorama Citizens Association (KCA), Protestant

Martha Jenkins, Esq., General Counsel
Alcoholic Beverage Regulation Administration

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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

2461 Corporation, t/a Madam's Organ, filed a Petition to Terminate a Voluntary Agreement (Petition) in order to terminate its Voluntary Agreement, approved on January 15, 2003. The Alcoholic Beverage Control Board (Board) ordered that placards announcing the Petition be posted on November 10, 2010. The Petition was initially protested by Advisory Neighborhood Commission (ANC) 1C and the Kalorama Citizens Association (KCA). Nevertheless, both protestants were dismissed and denied reinstatement, because they did not appear at the Roll Call Hearing on April 4, 2011. In re

2461 Corporation, t/a Madam's Organ, Board Order No. 2011-349, 1-2 (D.C.A.B.C.B. Jul. 27, 2011). Consequently, the Petition comes before the Board unopposed.

In lieu of an agreement by all of the parties, in order to terminate a Voluntary Agreement the Board must make the following findings under § 25-446:

(1) "The Board may accept an application to . . . terminate a voluntary agreement by fewer than all parties in the following circumstances: . . . [d]uring the license's renewal period; and . . . [a]fter 4 years from the date of the Board's decision initially approving the voluntary agreement";

(2) "The applicant seeking the amendment has made a diligent effort to locate all other parties to the voluntary agreement; or . . . [i]f non-applicant parties are located, the applicant has made a good-faith attempt to negotiate a mutually acceptable amendment to the voluntary agreement";

(3) "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

(4) "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(d)(2)(A)-(B), (d)(4)(A)-(C) (West Supp. 2012).

Furthermore, even though the Petition is unopposed, the Board recognizes that under District of Columbia Official Code §§ 1-309.10(d) and 25-609, an ANC's properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643 (D.C. 1982). 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.

Here, ANC 1C timely submitted a written resolution, objecting to the Petition. Specifically, ANC 1C alleged that terminating the Voluntary Agreement will adversely impact peace, order, and quiet; increase the demand for parking spaces, and threaten pedestrian safety. See ANC 1C Motion to Protest Madam's Organs Petition to Terminate Its Voluntary Agreement. Furthermore, ANC 1C alleged that the Petitioner had not contacted the Commission to discuss the Petition and failed to file a timely petition to terminate the Voluntary Agreement. Id. The Board will take ANC 1C's issues into account, and accord their views great weight under § 1-309.10(d).

Based on our review of the Petition and the facts, we approve the termination of the Voluntary Agreement.

First, we find that the original Petition was filed in a timely manner. We note that the Petition was submitted during the Petitioner's renewal period, and was submitted four years after the Voluntary Agreement was initially approved.

Second, we find that the Applicant has made diligent efforts to locate the parties to the Voluntary Agreement, and satisfied the good faith negotiation requirement. According to the law, the Petitioner is responsible for making "a diligent effort to locate all other parties to the voluntary agreement" and if found, must "make a good-faith attempt to negotiate a mutually acceptable amendment to the Voluntary Agreement." § 25-446(d)(4)(A)(i)-(ii). We have previously stated that the mediation and settlement conferences offered by the Board satisfy the good-faith negotiation requirement. NHV Corporation, Inc., t/a Haydee's Restaurant, Board Order No. 2008-189, ¶¶ 82-83 (D.C.A.B.C.B. Apr. 23, 2008).

Here, the parties to the Voluntary Agreement were ANC 1C and the KCA. Both parties had actual notice that the Respondent sought to terminate its Voluntary Agreement, and filed protest petitions in response. As we noted above, mediation satisfies the good-faith negotiation requirement contained in § 25-446(d)(4)(A)(ii). In this case, the parties did not have an opportunity to attend mediation, because both the ANC and the KCA were dismissed at the Roll Call Hearing for failing to appear; thus, the Board's Agent was denied the opportunity to schedule a mediation session for the parties. Under these circumstances, it is ANC 1C and the KCA's fault that the parties could not engage in good-faith negotiations. Therefore, we find that the Petitioner's actions in this case are sufficient, and satisfy the requirements of § 25-446(d)(4)(A).

Third, we find that the need for the amendment has been caused by changes to the neighborhood. In particular, since we approved the agreement in 2003 the D.C. Circulator has added a route that travels through the Adams Morgan neighborhood. Jonathan O'Connell, "District adds new D.C. Circulator party routes," Washington Business Journal (Mar. 16, 2009). Based on this new service provided to the neighborhood, the Board finds that this change in the neighborhood is sufficient justification for reexamining the efficacy and value of the Petitioner's Voluntary Agreement.

Fourth, the Board finds that terminating the Voluntary Agreement will not adversely impact the neighborhood; specifically, we disagree with ANC 1C that terminating the Voluntary Agreement will create peace, order, and quiet issues, increase the demand for parking, or threaten pedestrian safety. We note that the Petition only calls for the termination of the Voluntary Agreement approved in 2003. Yet, the Petitioner is subject to a second Voluntary Agreement, approved on May 21, 2008, which will still be in effect, and contains terms substantially similar to the ones appearing in the 2003 Voluntary Agreement. As a result, the termination authorized by the Board will not have a significant impact on the Petitioner's operations. Furthermore, we note that the Applicant has not requested an expansion to its occupancy; therefore, granting the Petition will not increase the number of patrons seeking parking spots.

ORDER

Therefore, it is hereby **ORDERED** on this 6th day of June 2012, that the Petition to Terminate its Voluntary Agreement, approved on January 15, 2003, filed by 2461 Corporation, t/a Madam's Organ, at premises 2461 18th Street, N.W., Washington, D.C., is hereby **GRANTED**. A copy of this Order shall be delivered to the Petitioner and ANC 1C.

District of Columbia
Alcoholic Beverage Control Board

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, 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, 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).