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: 2012-406
Petition to Terminate a Voluntary Agreement for a Retailer's Class CT License	)	
at premises 2461 18th Street, N.W. Washington, D.C. 20009	)	

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

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

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

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

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

ORDER DENYING APPLICANT'S MOTION FOR RECONSIDERATION

On June 6, 2012, the Alcoholic Beverage Control Board (Board) granted the Petition to Terminate a Voluntary Agreement (Petition) filed by 2461 Corporation, t/a Madam's Organ (Applicant), which resulted in the termination of the Applicant's 2003 Voluntary Agreement. In re 2461 Corporation t/a Madam's Organ, Case Number 11-PRO-00016, Board Order No. 2012-250, 3 (D.C.A.B.C.B. Jun. 6, 2012).

We note that this Petition was originally opposed by Advisory Neighborhood Commission (ANC) 1C and the Kalorama Citizens Association; however, they were dismissed from the protest, because both parties failed to appear at the April 4, 2012 Roll Call Hearing. In re 2461 Corporation, t/a Madam's Organ, Case Number 11-PRO-00016,

Board Order No. 2011-349 (D.C.A.B.C.B. Jul. 27, 2011). Therefore, the Petition was unopposed.

Subsequently, the Applicant has filed a Motion for Reconsideration, which requests that the Board also terminate the Applicant's 2008 Voluntary Agreement executed in conjunction with Advisory Neighborhood Commission 1C. Motion for Reconsideration, 7. The Applicant requests that we terminate the 2008 Voluntary Agreement, because the 2008 agreement is merely "an amendment and restatement of the [Voluntary Agreement] as opposed to a separate free standing agreement . . . ." Id. at 5. The Applicant also argues that the Board did not have to accord ANC 1C "great weight" and make findings of fact of conclusions of law in response to the ANC's timely submitted written recommendation once we dismissed it as a protestant. Id. at 6. We disagree.

As noted by ANC 1C, in its reply, the 2008 Voluntary Agreement was not ripe for termination at the time the Applicant submitted its Petition. ANC 1C Response, 1-2. As ANC 1C rightly notes, a petition to terminate a voluntary agreement must be submitted during an applicant's renewal period and "[a]fter 4 years from the date of the Board's decision initially approving the . . . agreement. D.C. Code § 25-446(d)(2) (West Supp. 2012); Id. at 2. Here, the 2008 Voluntary Agreement was approved on May 21, 2008, which made it ineligible for termination until May 22, 2012. 2461 Corporation, t/a Madam's Organ Restaurant, Case No. 35287-07/025P, Board Order No. 2008-202 (D.C.A.B.C.B. May 21, 2008). Therefore, the Applicant simply filed its Petition too early to terminate the 2008 Voluntary Agreement.

We further reject the Applicant's argument that the 2008 Voluntary Agreement was an amendment and restatement of the 2003 Voluntary Agreement. First, the 2008 Voluntary Agreement was executed between the Applicant and ANC 1C, while the 2003 Voluntary Agreement was executed between the Applicant, ANC 1C, and the Kalorama Citizens Association. Second, our Order, dated May 28, 2008, clearly approves the 2008 Voluntary Agreement as a separate Voluntary Agreement. 2461 Corporation t/a Madam's Organ Restaurant, Board Order No. 2008-202, at ¶ 27, pg. 12 (D.C.A.B.C.B. May 21, 2008). If the Applicant disagreed with this interpretation, it should have objected to the 2008 Order before it became final. For these reasons, we find that the 2008 Voluntary Agreement was not eligible for termination at the time the Applicant submitted its Petition and that the 2003 and 2008 Voluntary Agreements are completely separate agreements.[1]

Because we cannot grant the relief requested by the Applicant, the Applicant's argument regarding "great weight" is irrelevant. Nevertheless, we note that the Applicant's argument completely ignores the text of § 25-609, which states, "Whether or not the ANC participates as a protestant, the Board shall give great weight to the ANC recommendations as required by subchapter V of Chapter 3 of Title 1." D.C. Code § 25-609 (West Supp. 2012).

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[1] We also note that the Applicant claims the agreements are inconsistent; however, it fails to cite any examples of inconsistency. We note that the Board generally addresses conflicting provisions in multiple Voluntary Agreements by applying the most restrictive provision. Furthermore, if this fails to resolve the conflict, the Board may resolve such inconsistencies by relying on the principles of contract law. North Lincoln Park Neighborhood Ass'n v. District of Columbia Alcoholic Beverage Control Bd., 727 A.2d 872, 875 (D.C. 1999).

ORDER

Therefore, on this 17th day of October 2012, it is hereby **ORDERED** that the Applicant's Motion for Reconsideration, along with its request for oral argument, is **DENIED**. A copy of this Order shall be delivered to the Applicant and ANC 1C.

District of Columbia
Alcoholic Beverage Control Board

Ruthanne Miller, 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, 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).