

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

In the Matter of:)	
)	
Museum of Arts and Sciences, LLC)	License No.: 084061
t/a Museum of Arts and Sciences)	Case No.: 10-PRO-00052
)	Order No.: 2010-365
Applicant for a Retailer's Class CX License)	
at premises)	
915 F Street, N.W.)	
Washington, D.C. 20004)	

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

**ORDER DENYING DISMISSAL OF APPLICATION AND REQUIRING
APPLICANT TO SUBMIT ADDITIONAL DOCUMENTATION AND A
SECURITY PLAN**

The Protestants, ANC 6C and the Ventana and Mather Home Owners Association, have filed a Motion to Dismiss the Applicant's Application for a Retailer's Class CX License because they claim the Application does not provide sufficient information to comply with the statutory requirements. The Protestants were deemed by the Alcoholic Beverage Control Board ("Board") to have standing during the Roll Call Hearing on June 1, 2010. The Applicant opposes the Protestants' motion and all the parties have submitted written briefs.

Both the Ventana and Mather Home Owners Association, represented by Mr. Mpras, and ANC 6C argue that the license application submitted by the Applicant is deficient and should be dismissed. Mr. Mpras states that the Applicant failed to submit a security plan in violation of D.C. Code § 25-402(e) (2009), which he claims is demanded by the "Quick Guide for "CX" Retailers." Mr. Mpras further argues that the Applicant has failed to comply with D.C. Code § 25-402(a)(5) by failing to submit documents detailing the design of the establishment, the number of seats, and the number of patrons that will be permitted to be standing. Mr. Mpras also contends that the Applicant has failed to provide a detailed description of the type of food that will be served at the Applicant's

establishment under D.C. Code § 25-402(a)(6). Mr. Mpras asserts that the Applicant has failed to provide the specific locations of the Applicant's dance floors as required by ABRA's application form. Finally, the ANC asserts that the Applicant must provide a copy of its "business plans, operation plans, construction plans, security plans, traffic control and parking plans" and that the failure to do so is grounds to dismiss the Application.

In contrast, the Applicant argues that the Board should deny the Protestants' Motion to Dismiss. The Applicant argues that under D.C. Code § 25-402(e) a security plan is only required when requested by the Board, which the Board has not done at this time. The Applicant also contends that the designs and the occupancy limit recorded in the Application satisfies the requirements of D.C. Code § 25-402(a)(5). The Applicant also notes that it is not required to serve food under D.C. Code § 25-113(g)(1) (2010) and, as a result, any statement it offers is superfluous. The Applicant also states that the Protestants are asking for information to determine if the Applicant has sufficient "moral character" and "fitness" beyond the requirements of D.C. Code § 25-402; however, after reading the Protestants' submissions, the Board disagrees that the Protestants made this argument and therefore will not address it in this Order.

Below, the Board addresses the arguments made by the parties.

First, the Board disagrees with Mr. Mpras that the Applicant was required to submit a security plan to the Board with his initial Application.

D.C. Code § 25-402(e) states: "The Board may require, in its sound discretion, the applicant for a restaurant, tavern, or multipurpose facility license to file a written security plan with the Board." D.C. Code § 25-402(e).

Protestants incorrectly contend that the guide provided by ABRA requires the Applicant to submit a security plan. The Board notes that the Quick Guide provided by ABRA states: "You must provide a security plan to the ABC Board at both the time of your initial application and at renewal." *Compliance Guide for Class C Multipurpose Facility (CX)*. Even though the language is clear, literature developed by ABRA is not sufficient to require a licensee to submit a security plan under D.C. Code § 25-402(e) because it does not constitute a request by the Board. Only the Board itself, not ABRA, may order a multipurpose facility to submit a security plan. Therefore, the Applicant's Application shall not be dismissed for failing to submit a security plan.

Nevertheless, under D.C. Code § 25-402(e), the Board now requires the Applicant to submit a security plan. A CX license shall only be given to "legitimate theaters, universities, museums, conference centers, art galleries, or facilities (such as the Washington Convention Center, the Lincoln Theatre, or the D.C. Arena) for the performance of sports, cultural, or tourism-related activities." D.C. Code § 25-113(g)(1). But the Applicant's application indicates that it is applying for an entertainment endorsement that includes a cover charge and dancing. The Applicant has also indicated that it plans to have three floors of dancing and has applied for hours of operation, sale, and

entertainment that extend until 2:00 a.m. and 3:00 a.m where appropriate. As a result, although the Applicant wants to use his establishment for lectures, poetry readings, comedy acts, and chamber music, the Applicant also appears to be planning to operate like a nightclub. The District of Columbia requires all nightclubs to submit security plans because nightclubs have the potential to create public safety issues. D.C. Code § 25-113(d)(1) (2010). As a result, because the Applicant's Application indicates that his business will operate similarly to a nightclub, the Board requires the Applicant to submit a security plan no later than July 21, 2010.

Second, there is no need to address the Protestant's arguments that the Applicant failed to meet the requirements of D.C. Code § 25-402(a)(5) and that the Application did not sufficiently indicate the type of food that will be served because the Board now requires the Applicant to submit further documentation.

Under D.C. Code § 25-401(a)(1), "[a] person applying for issuance [of a license] shall file with the Board an application [that] contain[s] the information set forth in this chapter and any additional information that the Board may require."

The Board believes that the Applicant filled out its Application for a CX license in good faith and will not dismiss the Application. Yet, based on the information provided, it is unclear whether the Applicant will be operating as a conference center, meeting location, or a nightclub. As a result, the Board, using its power to require additional information under D.C. Code § 25-401(a)(1), requires the Applicant to submit further information in order to clarify the Application and ensure that granting it would be lawful. As such the Board requires the Applicant to submit the following information no later than July 21, 2010:

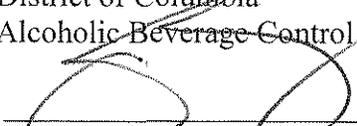
- (1) a floor and architecture plan that includes the location of the establishment's dance floors;
- (2) the Applicant's plans for closing the establishment on Thursday, Friday, and Saturday nights;
- (3) the Applicant's marketing plan and the names of promoters the Applicant intends to use, if any;
- (4) the Applicant's plans for utilizing the Metropolitan Police Department's reimbursable detail;
- (5) the Applicant's plans for hiring security personnel and providing training;
- (6) the Applicant's plans for serving food, what type of kitchen facility the Applicant expects to provide at his establishment, whether the Applicant will be providing full meals, small plates, or merely providing snacks; and whether the Applicant will allow or bring in outside caterers; and
- (7) how many seats the Applicant plans to provide and the number of people the Applicant intends to allow to stand inside the establishment.

The Board recognizes that ANC 6C requested somewhat different information than the Board is requiring above. Nevertheless, the Board holds that any of the ANC's demands that are not satisfied by this Order are, in fact, satisfied by the Applicant's

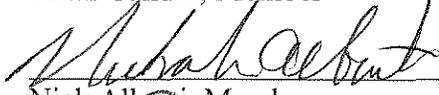
Application or are not required. Furthermore, because the Board is requiring more information than required by ABRA's Application form, the Board deems it inappropriate to dismiss the Applicant's Application at the present time.

Therefore, upon consideration of the Protestant's Motion and the entire record of this matter, the Board, on this 23rd day of June, 2010, hereby **DENIES** the Protestant's Motion subject to the condition that the Applicant submits a security plan to the Board and submits the information requested in this Order to the Board and the Protestants by July 21, 2010.

District of Columbia
Alcoholic Beverage Control Board

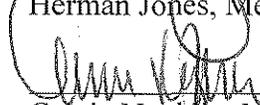

Charles Brodsky, Chairperson

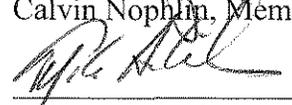
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Pursuant to Section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001) and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

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 (April 2004) 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).