

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

In the Matter of:)		
)		
Top Shelf, LLC)	Case No.:	14-PRO-00011
t/a Penn Quarter Sports Tavern)	License No.:	ABRA-076039
)	Order No.:	2014-511
Petition to Terminate a Settlement Agreement)		
)		
at premises)		
639 Indiana Ave., NW)		
Washington, D.C. 20004)		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Penn Quarter Sports Tavern, Applicant

Michael Brand, Owner, on behalf of Petitioner

Dominick Cardella, Abutting Property Owner, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**ORDER DENYING PROTESTANT'S MOTION FOR RECONSIDERATION OF
BOARD ORDER 2014-427**

This matter comes before the Alcoholic Beverage Control Board (Board) on the Petition to Terminate a Settlement Agreement filed by Top Shelf, LLC, t/a Penn Quarter Sports Tavern (Petitioner).

Procedural History

On September 10, 2008, Petitioner entered into a settlement agreement with ANC 6C and Protestant that was approved by the Board on October 1, 2008. *Top Shelf, LLC t/a Penn Quarter Sports Tavern*, Case No. 10766-08/024P, Board Order No. 2008-264, 1 (D.C.A.B.C.B. Oct. 1, 2008) [2008 Settlement Agreement]. On January 10, 2014, Penn Quarter filed a timely Petition to Terminate a Settlement Agreement (“Petition”) requesting that the Board terminate its 2008 settlement agreement. *Id.*

Penn Quarter’s Petition was timely protested by Dominick Cardella, Abutting Property Owner, and ANC 2C on February 11, 2014 and February 21, 2014, respectively. *ABRA Protest File No. 14-PRO-00011*. The parties came before the Board for a Protest Status Hearing on April 23, 2014. At the Protest Status Hearing, the ANC and Petitioner presented the Board with a settlement agreement, which the Board approved. *Top Shelf, LLC t/a Penn Quarter Sports Tavern*, Case No. 14-PRO-00011, Board Order No. 2014-225, 2 (D.C.A.B.C.B. May 21, 2014) [2014 Settlement Agreement]. The Petitioner and remaining Protestant, Dominick Cardella (hereinafter “Protestant”), proceeded to a Protest Hearing on June 4, 2014.

After the Protest Hearing, the Board issued Board Order No. 2014-258 in which it made the following Conclusions of Law:

- (1) Penn Quarter is permitted to utilize its televisions until 12:00 midnight on Friday and Saturday on the outdoor patio.
- (2) The remaining portions of the 2008 settlement agreement, entered between Penn Quarter, Advisory Neighborhood Commission 6C (“ANC 6C”) and Dominick Cardella on October 1, 2008, remain in effect.
- (3) The settlement agreement, entered between Penn Quarter and Advisory Neighborhood Commission 2C (“ANC 2C”) on May 21, 2014, remains in effect.

Top Shelf, LLC t/a Penn Quarter Sports Tavern, Case No. 14-PRO-00011, Board Order No. 2014-258, 1 (D.C.A.B.C.B. September 10, 2014).

On September 11, 2014, the Protestant filed a Motion for Reconsideration in response to Board Order No. 2014-258 in which the Board extended the hours of the Applicant’s use of its outdoor televisions. *ABRA Protest File 14-PRO-00011, Motion for Reconsideration*, dated September 11, 2014 [Motion]. In his Motion, the Protestant argues that the Board’s decision to extend the hours of operation of the outdoor televisions would encourage excessive noise and have a negative impact on the peace and quiet of the neighborhood. *Id.*

On November 5, 2014, the Board issued Board Order No. 2014-427, in which it denied the Protestant’s Motion for Reconsideration. *Top Shelf, LLC t/a Penn Quarter Sports Tavern*, Case No. 14-PRO-00011, Board Order No. 2014-427, 1-5 (D.C.A.B.C.B. November 5, 2014). All parties received service of this Order on November 6, 2014. *See* Email from Sarah

Fashbaugh, Community Resource Advisor, Alcoholic Beverage Regulation Admin., (Nov. 6, 2014, 15:18 EST). In its Order, the Board found that the Protestant failed to demonstrate that the Board erroneously decided any of its Conclusions of Law in its previous order. *Top Shelf, LLC v/a Penn Quarter Sports Tavern*, Case No. 14-PRO-00011, Board Order No. 2014-427, 4 (D.C.A.B.C.B. November 5, 2014). Therefore, the Board upheld its initial decision in Board Order No. 2014-258. *Id.*

Protestant's Motion

On November 18, 2014, the Protestant filed a Motion for Reconsideration in response to the Board's decision in Board Order No. 2014-427. In this Motion, the Protestant expresses concern on behalf of his second floor tenants. *ABRA Protest File 14-PRO-00011, Motion for Reconsideration*, dated November 18, 2014 [*Second Motion*]. More specifically, the Protestant argued that he and his tenants fear that when a sports event of interest occurs at the establishment, there will be a heightened noise level that will emanate from the establishment. *Id.* In his Motion, the Protestant requested that the Board terminate the use of Penn Quarter's outdoor televisions. *Id.*

Discussion

The Board affirms its prior Order and denies the Protestant's Motion. The Protestant's Motion fails for two reasons. First and foremost, under 23 DCMR § 1719.1, any party adversely affected by the decision rendered in a Board Order may file a Motion for Reconsideration within ten days of service of the Order. In this case, the Protestant was duly served on November 6, 2014. In response, the Protestant filed a Motion for Reconsideration on November 18, 2014, twelve calendar days after service of the Order. Therefore, the Protestant's motion was untimely filed.

Further, the Board finds that the Protestant's Motion fails to conform to the requirements of a petition for reconsideration. Under 23 DCMR 1719.3, a petition for reconsideration shall state briefly the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. 23 DCMR § 1719.3. Here, the Protestant fails to argue that the Board's Conclusions of Law or Findings of Fact were contrary to the evidence provided on the record. Moreover, the Board finds that a motion for reconsideration from the Board's decision ruling on a previous motion for reconsideration in the same matter is not an opportunity to raise new arguments. In the instant case, the second motion filed by the Protestant added little to what had been advanced in the first. *See Yates v. Behrend*, 280 F.2d 64, 66 (D.C. 1960). Additionally, the second motion provided no reason for failing to bring this argument forward earlier. *Id.* The Board concludes that to permit a motion for reconsideration from the denial of a second motion would be contrary to fairness of the opposing parties and the intent of ABRA's regulations. For the foregoing reasons, the Board upholds its initial decisions in Board Order Nos. 2014-258 and 2014-427.

ORDER

Therefore, based on the foregoing, the Board, on this 10th day of December 2014,
~~DENIES the Motion for Reconsideration filed by the Protestant.~~

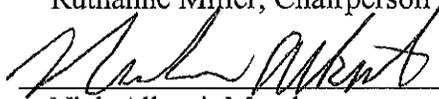
It is **FURTHER ORDERED** that this Order is final. Any further objections to this Order shall be directed to the District of Columbia Court of Appeals.

ABRA shall deliver copies of this Order to the Petitioner and the Protestant.

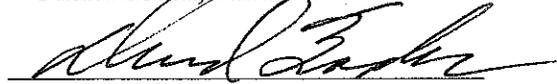
District of Columbia
Alcoholic Beverage Control Board



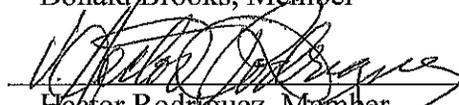
Ruthanne Miller, Chairperson



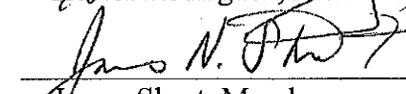
Nick Alberti, Member



Donald Brooks, Member



Hector Rodriguez, Member



James Short, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, N.W., 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, District of Columbia 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, 430 E Street, 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).