

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

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In the Matter of:	)		
	)		
Top Shelf, LLC	)	Case No.:	14-PRO-00011
t/a Penn Quarter Sports Tavern	)	License No.:	ABRA-076039
	)	Order No.:	2014-427
Petition to Terminate a Settlement Agreement	)		
	)		
at premises	)		
639 Indiana Ave., NW	)		
Washington, D.C. 20004	)		

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**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

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**ORDER DENYING PROTESTANT’S AND PETITIONER’S MOTIONS FOR  
RECONSIDERATION OF BOARD ORDER 2014-258**

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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 (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 (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 (D.C.A.B.C.B. September 10, 2014).

### **Protestant’s Motion**

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.*

### **Petitioner’s Motion**

On September 15, 2014, the Petitioner filed a Petition for Reconsideration and Clarification of the Board’s Order denying the termination of its 2008 Settlement Agreement. In its Petition, the Petitioner raises six issues.

First, the Petitioner argues that it has satisfied both of the application criteria to terminate a settlement agreement as set forth in D.C. Official Code §25-446 (d)(2). *ABRA Protest File 14-PRO-00011, Petition for Reconsideration and Clarification*, dated September 19, 2014 [*Petition*]. This provision provides that “the Board may accept an application to amend or terminate a settlement agreement by fewer than all parties in the following circumstances: (A) During the license’s renewal period; and (B) After four years from the date of the Board’s decision initially approving the settlement agreement.” D.C. Official Code §25-446 (d)(2).

The Petitioner further argues that it has also satisfied the criteria for terminating a settlement agreement. In its Petition, Penn Quarter states that under D.C. Official Code §25-446 (d)(1), it has satisfied the criteria for terminating a settlement agreement. *Petition*, ¶¶ 2-3. The Petitioner states that in Board Order No. 2014-258, it concluded that Penn Quarter demonstrated that amending the settlement agreement will not result in an adverse impact under D.C. Official Code §25-446 (d)(4) (C). *Petition*, ¶¶ 4-7.

Next, the Petitioner argues that Board Order No. 2014-258 incorrectly states the Petitioner’s interest in terminating the 2008 settlement agreement. *Petition*, ¶¶ 8-10. The Petitioner admits that he was confused as to which agreements were being discussed during some of the protest proceedings. *Id.* The Petitioner expresses that the parties’ intent was not to partially replace the 2008 settlement agreement, but rather completely replace this agreement with the 2014 settlement agreement submitted to the Board. *Id.*

In addition, the Petitioner argues that the interests of the neighborhood are best served by ANC 2C through the 2014 settlement agreement. *Petition*, ¶¶ 11-16. The Petitioner contends that ANC 2C is the party best situated to represent the interests of the neighborhood in any settlement agreement with the Petitioner. *Petition*, ¶ 11. The Petitioner posits that as a resident and landlord within the jurisdiction of the ANC 2C, the Protestant’s interests will still be looked after by the ANC 2C. *Petition*, ¶ 15.

Further, the Petitioner argues that the decision in Board Order No. 2014-258 to amend the terms of the 2008 settlement agreement makes it superfluous and an unnecessary administrative burden on government resources. *Petition*, ¶ 17.

Lastly, the Petitioner argues that the Protestant’s opinions regarding noise from the premises negatively affecting the neighborhood are unfounded and unsubstantiated. *Petition*, ¶¶ 19-22. The Petitioner relies on the testimony of ABRA Investigator Abiye Ghenene which revealed that the noise emanating from the establishment did not appear to be excessive. *Petition*, ¶ 21.

### **Protestant’s Response to Petitioner’s Motions**

On September 23, 2014, the Protestant filed an Opposition to the Petitioner’s Petition for Reconsideration and Clarification. *ABRA Protest File 14-PRO-00011, Opposition to Petition for Reconsideration and Clarification*, dated September 23, 2014 [*Opposition*]. The Protestant

responds that the usage of the outdoor televisions encourages “rowdy and raucous behavior” that is in violation of the D.C. Noise Control Act. *Id.*

### **Discussion**

The Board affirms its prior Order and denies both Parties’ Motions. The Board finds that the Parties, in their respective motions, have failed to demonstrate that the Board erroneously decided any of its Conclusions of Law in its previous order. *See* 23 DCMR § 1719.3. Further, the Board affirms its conclusion that its amendments to the agreement will have a de minimis impact on the neighborhood; the Protestant’s arguments to the contrary are not persuasive. In addition, the Board is not convinced that the mere fact that a licensee has entered into a settlement agreement with a third party is sufficient grounds as a matter of law for terminating an agreement entered into with another party. Therefore, the Board upholds its initial decision in Board Order No. 2014-258.

### **ORDER**

Therefore, based on the foregoing, the Board, on this 5<sup>th</sup> day of November 2014, **DENIES** the Motion and Petition for Reconsideration filed by both Parties.

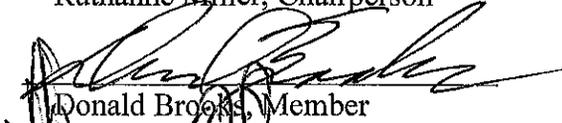
The Board **ADVISES** the ANC and the Petitioner are free to amend or terminate the new agreement they entered into if they are not satisfied with the Board’s decision regarding the original settlement agreement.

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

District of Columbia  
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, 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, 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).