THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

Top Shelf, LLC t/a Penn Quarter Sports Tavern Petition to Terminate a Settlement Agreement at premises 2309 18th Street N.W. Washington, D.C. 20009	Case Number: License Number: Order Number:	14-PRO-00011 ABRA-076039 2014-258

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

ALSO PRESENT: Top Shelf, LLC t/a Penn Quarter Sports Tavern, Petitioner

Michael Brand, Owner, on behalf of Petitioner

Dominick Cardella, Abutting Property Owner, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds good cause to amend the settlement agreement, dated October 1, 2008, attached to the Retailer's Class CT License held by Top Shelf, LLC, t/a Penn Quarter Sports Tavern, (hereinafter "Petitioner" or "Penn Quarter") as follows:

(1) Penn Quarter is permitted to utilize its televisions until 11:00 p.m. Monday through Thursday and 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.

The Board finds that this minor amendment to the agreement will not have a negative impact on the surrounding neighborhood.

Procedural Background

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. 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*]. The settlement agreement was entered into by Penn Quarter, ANC 6C[1] and Dominick Cardella and was approved by the Board on October 1, 2008. Id.

The Board found that the Petition satisfied D.C. Official Code § 25-446(d)(2) because it was filed during the Petitioner's renewal period and after four years from the date the Board originally approved the settlement agreement at issue in this matter. The Petition also contained the affidavit required by § 25-446(d)(5). The Alcoholic Beverage Regulation Administration (ABRA) then provided notice to the parties to the settlement agreement and the public in accordance with District of Columbia (D.C.) Official Code § 25-446(d)(3).

Subsequently, protests against the Petition were filed by ANC 2C and Dominick Cardella in accordance with District of Columbia (D.C.) Official Code §§ 25-601(1) and 25-602. *ABRA Protest File No.* 14-PRO-00011.

The parties came before the Board's Agent for a Roll Call Hearing on March 10, 2014 and the Protestants were granted standing to protest the Petition. The parties then 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.

Based on the Protestant's initial protest letter, the Board may only grant the Petition if the Board finds that the request will not have a negative impact on peace, order, and quiet in the area

[1] Although ANC 6C is a signatory of the original Settlement Agreement between the parties, the ANC's boundaries have since realigned and the establishment is no longer within the jurisdiction of ANC 6C. Therefore, this matter was brought to the attention of ANC 2C, the ANC in which the establishment is located.

located within 1,200 feet of the establishment and otherwise satisfies § 25-446. D.C. Official Code §§ 25-446(d)(4), 25-602; Letter from Dominick Cardella, Abutting Property Owner, to Tesha Anderson, Adjudication Assistant, Alcoholic Beverage Control (ABC) Board (February 11 2014) [Cardella Protest Letter][2].

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

1. Penn Quarter's hours of operation are as follows: Monday through Sunday, 6:30 a.m. – 2:00 a.m. See *ABRA Licensing File No. ABRA-076039*. Penn Quarter's hours of sales, service and consumption are as follows: Sunday through Thursday, 11:00 a.m. to 1:30 a.m., Friday and Saturday, 11:00 a.m. to 2:30 a.m. Id. Finally, the establishment's hours of entertainment are as follows: Sunday through Thursday, 6:00 p.m. to 1:30 a.m., Friday and Saturday 6:00 p.m. to 2:00 a.m. Id.

2. Petitioner holds a Retailer's Class CT License and has two settlement agreements attached to its license. *ABRA Protest File No.* 14-PRO-00011, Notice of Public Hearing. The Board approved the original settlement agreement on October 1, 2008. *2008 Settlement Agreement*, 2. The Board approved the second settlement agreement, entered into by ANC 2C and Penn Quarter on May 21, 2014. *2014 Settlement Agreement*, 2.

I. 2008 Settlement Agreement

3. Petitioner entered into a settlement agreement with ANC 6C and Protestant on September 10, 2008. *2008 Settlement Agreement*, 1. In the agreement, the parties agreed to take reasonable measures, including the possibility of additional sound proofing, to minimize the level of sound emanating from the premises. Id. at 4. In addition, the establishment promised to control amplified volume levels and maintain an environment quiet enough, as provided by DC law, to allow residents enjoyment of the neighborhood. Id.

4. The agreement includes a provision by which the establishment agreed to have all exterior amplified sound equipment and speakers turned off prior to 11:00 p.m. daily, and exterior televisions turned off prior to 10 p.m. Id. at 5.

II. 2014 Settlement Agreement

5. Penn Quarter entered into a settlement agreement with ANC 2C on May 21, 2014. *2014 Settlement Agreement*, 2. The agreement provides that the establishment's "hours of operation"

[2] The Board notes that at the conclusion of the Protest proceedings, the Protestant requested the opportunity to submit Proposed Fact Findings of Fact and Conclusions of Law, but none was received by the Board. Instead, the Protestant submitted correspondence dated June 23, 2014 which reiterated its position. The Board did not consider the post-hearing submission for purposes of deliberating this matter.

shall be consistent with the hours of operation as permitted by the establishment's ABRA license and Sidewalk Café license. Id.

6. As a condition of the settlement agreement between the parties, ANC 2C withdrew its protest. Id.

III. Testimony of ABRA Investigator Abiye Ghenene

7. ABRA Investigator Abiye Ghenene investigated the Petition and wrote the Protest Report submitted into the record. *Transcript* (*Tr.*), June 4, 2014 at 21. The establishment is located at 639 Indiana Avenue NW in a Downtown Development zone in which the general purpose is to create a balance mix of [building] uses, including both residential and commercial. Id. at 23; *ABRA Protest File No. 14-PRO-00011*, Protest Report, 2-3 [*Protest Report*]. The zone in which the establishment is located is also a commercial ("C4") zone, whereby office, retail, house and other mixed uses are permissible. *Protest Report*, 3.

8. There are approximately twenty-eight ABC-licensed establishments within 1,200 feet of the establishment. *Tr.*, 6/4/14 at 23. There is one daycare approximately 149 feet away from the establishment. Id. The surrounding area of Indiana Avenue has high pedestrian and vehicular traffic throughout the day and minimal traffic during the evening hours. *Protest Report*, 4.

9. The establishment has two outdoor seating areas. *Tr.*, 6/4/14 at 24. These areas can seat about forty patrons. Id.

10. As part of the investigation, ABRA investigators monitored the establishment on five separate occasions. *Tr.*, 6/4/14 at 24; *Protest Report*, 6. The investigators monitored the establishment and immediate surrounding areas during operational hours and nonoperational hours. *Protest Report*, 6. ABRA investigators observed light to heavy levels of vehicular/pedestrian traffic and minimal available parking. *Protest Report*, 6. During this monitoring period, investigators heard minimal specific noise emanating from the establishment while patrons were sitting in the Sidewalk Café. Id.

11. During Investigator Ghenene's visits, the establishment televisions were playing, but the noise emanating from them did not appear to be excessive. *Tr.*, 6/4/14 at 28. This type of noise is appropriate for a C4 zone. Id.

12. The establishment's investigative history shows that it received a warning letter and committed two violations of its settlement agreement within six days of one another in the same month of 2010. *Tr.*, 6/4/14 at 36. There have been no violations since 2010. Id.

IV. Testimony of Michael Brand

13. Michael Brand is the owner of Penn Quarter. Id. at 3, 43. The establishment has been in business for ten years. Id. at 43.

14. At the hearing Mr. Brand clarified that he was not seeking termination of the settlement agreement, but only amendment to the provision of its settlement agreement with the Protestant that states "The establishment will have all exterior amplified sound equipment and speakers turned off prior to 11:00 p.m. daily and exterior televisions turned off prior to 10:00 p.m." Id. at 9. Mr. Brand complains that when there are large crowds seated in the outdoor area, he has to turn the television off in order to comply with the establishment's 2008 settlement agreement. Id. at 10. With the current hour restriction, patrons are asked to go inside if games are broadcast beyond 10:00 p.m. Id. As a result, Mr. Brand is asking to keep the establishment televisions on until the outdoor seating areas close. Id. at 46.

a. Good Faith Negotiations

15. Mr. Brand made several efforts to negotiate amendments to the settlement agreement with the Protestant. Id. at 48. Mr. Brand contacted the Protestant about a year prior to the Protest Hearing. Id. He contacted the Protestant verbally and by email, asking to discuss a change in the hours the televisions would be on at the establishment. Id. at 50.

b. Change in Circumstances

16. Mr. Brand finds there to be several key changes in the neighborhood since he first opened the establishment. Id. at 71. About five years ago, the city installed lighting down Indiana Avenue, N.W. Id. at 72. When that area of the city was developed, many more residents moved into the neighborhood. Id. at 73. Additionally, the storefronts that were once boarded up are now restaurants that patrons enjoy visiting. Id.

17. Since 2008, there are a few establishments that have opened for business that are similar to Penn Quarter. Id. at 85. For example, Redline, located near the Verizon Center, is a sports bar that also has televisions located in an outdoor seating area. Id.

18. In addition, Penn Social, another sports bar, roughly three blocks away, is a key competitor for the establishment. Id at 87. It seats a large number of patrons ,is constantly busy and enjoys late service. Id. at 86.

19. Mr. Brand is concerned about increasing competition from the various bars and restaurants that are opening up in the neighborhood due to their size and resources. Id. at 89. Because Penn Quarter is a smaller establishment, he is finding it difficult to compete. Id.

V. Testimony of David Quinlan

20. Mr. Quinlan testified on behalf of the Protestant. Id. at 95. Mr. Quinlan resides at 601 Pennsylvania Avenue in an apartment building that has bedroom and living room windows that face Indiana Avenue. Id. at 95-96. He has lived at this residence for twenty years. Id. at 98.

21. Mr. Quinlan expressed his concerns about the noise emanating from the establishment. He testified that he did not know about the televisions, but at least three times a week he hears

noise from the establishment that sounds like a wave. He did not know where the sound was coming from until recently. Id. at 96 -97.

VI. Testimony of Dominick Cardella

22. Dominick Cardella is the abutting property owner next to Penn Quarter. Id. at 5. The establishment and his residence share a common wall. Id. at 125. He has lived in this building for forty-two years. Id. at 108.

23. Mr. Cardella testified that based upon his research of the District of Columbia Noise Control Act, the maximum noise levels in commercial areas during the hours of 9:00 p.m. to 7:00 a.m. is 65 decibels. Id. at 109. On May 15, 2014, he purchased a digital sound level meter and took a sound reading of the establishment at approximately 10:20 p.m. Id. at 110. The meter recorded a reading of 89.6 decibels. Id.[3]

24. Mr. Cardella admits that in spite of his belief that the establishment has violated its settlement agreement on numerous occasions, he has not filed any complaints because he tried to settle his differences directly with Mr. Brand. Id. at 127.

CONCLUSIONS OF LAW

25. Under D.C. Official Code § 25-446(d)(1), "Unless a shorter term is agreed upon by the parties, a settlement agreement shall run for the term of a license, including renewal periods, unless it is terminated or amended in writing by the parties and the termination or amendment is approved by the Board. D.C. Official Code § 25-446(d)(1). Accordingly,

> The Board may approve a request by fewer than all parties to amend or terminate a settlement agreement for good cause shown if it makes each of the following findings based upon sworn evidence:
>
> (A) (i) The applicant seeking the amendment has made a diligent effort to locate all other parties to the settlement agreement; or

[3] The Board notes that Section 2700.7 of Chapter 27 of Title 20 of the D.C. Municipal Regulations requires sound levels to be tested in accordance with the "test procedures to be used for measuring sound levels to determine compliance with Chapters 27 and 28..." 20 DCMR §§ 2700.7. Noise levels under the Act may be measured by any official designated by the Mayor or by any person who is a qualified acoustical engineer who holds a certificate of registration as a professional engineer issued by the District.

In the present case, there is no evidence on the record to support that this testing of sound comports with the testing procedures created in accordance with Chapter 27 in order to find a violation of Chapter 27. The Board interprets §2700.20 as only allowing the Board to deem measurements taken by a government official or "qualified acoustical engineer" sufficient to determine whether a licensee is in violation of Chapter 27. The testing procedures are discussed in Chapter 29 of title 20 of the DCMR. 20 DCMR § 2900 *et. seq.* (West Supp. 2014); See also 19th and K, Inc. t/a Ozio Martini & Cigar Lounge, Case No. 13-PRO-00151, Board Order No. 2014-315 (D.C.A.B.C.B. August 15, 2014). Mr. Brand has not established that he is a "qualified acoustical engineer that holds a certificate of registration as a professional engineer issued by the District." 20 DCMR § 2700.7. As a result, the Board cannot accept these measurements as proof that Penn Quarter is in violation of Chapter 27.

(ii) If non-applicant parties are located, the applicant has made a good-faith attempt to negotiate a mutually acceptable amendment to the settlement agreement;

(B) 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

(C) 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. Official Code § 25-446(d)(4)(A)-(C).

26. The Board amends the settlement agreement as follows, based on the Board's determination that such amendments satisfy § 25-446.

I. PENN QUARTER SATISFIED § 25-446(D)(4)(A) BY ATTEMPTING TO NEGOTIATE AN AMENDED SETTLEMENT AGREEMENT IN GOOD FAITH WITH THE PROTESTANT.

27. The Board finds that Penn Quarter satisfied § 25-446(D)(4)(A) through its negotiations with the Protestant. Under § 25-446(d)(4)(A), in order to terminate or amend a settlement agreement when the other signatories have been located, it must be shown that "the applicant has made a good-faith attempt to negotiate a mutually acceptable amendment to the settlement agreement." D.C. Official Code § 25-446(d)(4)(A)(i)-(ii).

28. The Board notes that the Petitioner negotiated in good faith when attempting to amend the settlement agreement with the ANC and the Protestant. Supra, at ¶¶ 6, 15. The Board also credits Mr. Brand's testimony that he contacted the Protestant on numerous occasions in which he inquired about the possibility of amending the hours of television usage. Supra, at ¶ 15. In addition, Mr. Brand was able to successfully negotiate a settlement agreement with ANC 2C. Supra, at ¶ 6.

29. Accordingly, the Board finds that Penn Quarter negotiated in good faith and therefore has satisfied § 25-446(D)(4)(A).

II. PENN QUARTER DEMONSTRATED THAT SOME OF THE PROVISIONS OF THE SETTLEMENT AGREEMENTS MERIT AMENDMENT UNDER § 25-446(D)(4)(B) BASED ON A CHANGE IN THE NEIGHBORHOOD AND CIRCUMSTANCES BEYOND THE CONTROL OF THE PETITIONER.

30. Petitioner clarified at the hearing that he is not interested in terminating the agreement in its entirety, but rather only in amending the provision that limits the hours of the outdoor television usage. Supra, at ¶ 14.

31. Petitioner has provided sufficient evidence to demonstrate that an amendment to the hours of outdoor television usage in its establishment is warranted.

32. Under § 25-446(d)(4)(B), in order to terminate or amend the settlement agreement, Penn Quarter must show that "[t]he 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." § 25-446(d)(4)(B).

33. Here, the Board notes several changes in the neighborhood that warrant amending the settlement agreement's television operation hours. First, it is clear that the Petitioner has been granted an entertainment endorsement which allows for entertainment to be featured until 1:30 a.m. Sunday through Thursday and until 2:00 a.m. on Friday and Saturday. Supra, at ¶ 1. The Petitioner is not requesting for the use of the outdoor televisions to last that same duration, but rather until 11:00 p.m. Monday through Thursday and until 12:00 a.m. on Friday and Saturday. Supra, at ¶ 3. This request is one hour later than the outdoor televisions are currently running Sunday through Thursday and two hours later on Friday and Saturday.

34. The record also shows that the neighborhood in which the establishment is located has undergone many changes and has attracted many new businesses and patrons. Supra, at ¶ 8. More specifically, Penn Quarter is experiencing direct competition with nearby, similar establishments who are permitted to have unlimited television usage in their outdoor seating areas. Supra, at ¶ ¶ 16-19. As a result, the Petitioner is requesting the extra time allotment to utilize the outdoor televisions so that the establishment can accommodate the patrons who come to the establishment to enjoy sporting events.

35. Due to the change in circumstances as described above, the Board finds that an amendment to the hours that the outdoor televisions are used is justified.

III. PENN QUARTER DEMONSTRATED THAT AMENDING THE SETTLEMENT AGREEMENT WILL NOT RESULT IN AN ADVERSE IMPACT UNDER § 25-446(D)(4)(C).

36. The Board finds that amending the agreement to allow Penn Quarter the ability to utilize the outdoor televisions until 11:00 p.m. Monday through Thursday and until 12:00 a.m. on Friday and Saturday will not have a negative impact on the neighborhood's peace, order, and quiet.

37. The burden is on the Petitioner to show that "[t]he 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." § 25-446(d)(4)(C). The only appropriateness standard raised by the Protestant is § 25-313(b)(2), which states, "[i]n determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in *§§ 25-725* and *25-726."* D.C. Official Code § 25-313(b)(2).

A. Amending the settlement agreement will not encourage crime.

38. The Board finds that allowing Penn Quarter to expand its hours of use of the outdoor televisions will not subject the neighborhood to an increase in crime or other forms of disorder. Multiple investigations conducted by ABRA show that the establishment is not a source of crime and disorder in the community, and Penn Quarter's record shows that the establishment is not engaged in any major violations of the city's liquor laws. Supra, at ¶¶ 10-12.

B. Amending the settlement agreement will not encourage excessive noise.

39. The Board further finds that allowing Penn Quarter to expand its hours of use of the outdoor televisions will not have a negative impact on noise in the neighborhood.

40. Section § 25-725 states, "The licensee under an on-premises retailer's license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment by the use of any: . . .Mechanical device . . ." D.C. Official Code § 25-725(a)(1). Further, § 25-313(b)(2) permits the Board to consider noise beyond the scope of § 25-725. Panutat, LLC, t/a District of Columbia Alcoholic Beverage Control Bd., 2013 WL 5271321, *4 n. 12 (D.C. 2013) ("However, in mandating consideration of the effect on peace, order, and quiet, § 25-313(b)(2) does not limit the Board's consideration to the types of noises described in § 25-725.")

41. The Board credits the testimony of Investigator Ghenene that after monitoring the establishment on five separate occasions, the noise emanating from the establishment was minimal. Supra, at ¶ 11. Further, the Board notes that the establishment has had no ABRA violations since 2010. Supra, at ¶ 12. The Board credits the ABRA investigator's testimony that the establishment's televisions emanate minimal noise in the neighborhood. Supra, at ¶¶ 10-11. The Board also credits the testimony of the Protestant, who admits that he has made no complaints of a violation of the settlement agreement to ABRA, an option available to him as an abutting property owner and signatory of the underlying settlement agreement. Supra, at ¶ 24.

42. In light of the above findings, the Board determines that an extension to the hours of the usage of outdoor televisions will have a de minimis impact on the surrounding neighborhood. Consequently, the Board will amend the agreement to allow Penn Quarter to extend the hours of usage of the outdoor televisions until 11:00 p.m. Monday through Thursday and until 12:00 midnight on Friday and Saturday.

C. Amending the settlement agreement will not encourage trash and litter.

43. The Board finds that allowing Penn Quarter to expand its hours of use of the outdoor televisions will not encourage trash and litter around the surrounding neighborhood. Under § 25-726, the licensee must comply with the Litter Control Amendment Act of 1987 and ". . . take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter." D.C. Official Code § 25-726. The record does not show any evidence that the establishment has created a trash or litter problem in the neighborhood.

44. Therefore, the Board finds that amending the hours of usage of the outdoor televisions provision of the settlement agreement in accordance with this Order will not have an adverse impact on the neighborhood.

IV. THE PETITIONER SATISFIED ALL REMAINING REQUIREMENTS REQUIRED TO AMEND THE SETTLEMENT AGREEMENTS.

45. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestant in their initial protest. See Craig v. District of Columbia Alcoholic Beverage Control Bd., 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact."); 23 DCMR § 1718.2. Accordingly, based on the Board's review of the Petition and the record, Penn Quarter has satisfied all remaining requirements imposed by Title 25 and Title 23 to merit the amendment of its settlement agreement by the Board in accordance with this Order.

ORDER

Therefore, the Board, on this 10th day of September 2014, hereby **AMENDS** the settlement agreement entered into by the Petitioner, the ANC, and the Protestant as follows:

(1) Penn Quarter is permitted to utilize its televisions until 11:00 p.m. Monday through Thursday and until 12:00 midnight on Friday and Saturday on the outdoor patio.

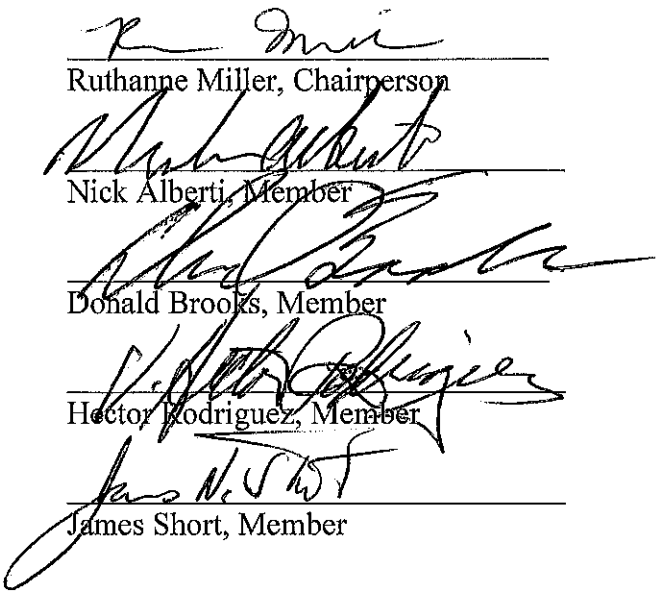
(2) The settlement agreement, entered between Penn Quarter and ANC 2C on May 21, 2014, remains in effect.

(3) The remaining portions of the settlement agreement, entered between Penn Quarter, ANC 6C and Dominick Cardella on October 1, 2008, remain in effect.

IT IS FURTHER ORDERED that all other provisions of the settlement agreement shall remain in full force and effect.

ABRA shall provide copies of this Order to the Petitioner, ANC 2C, ANC 6C 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

Under 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, under 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 under 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).