

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

In the Matter of:)	
)	
Notta Tav Urne, LLC)	Case No.: 13-PRO-00124
t/a Pi Restaurant)	License No.: ABRA-076754
)	Order No.: 2014-473
Petition to Terminate a Settlement Agreement)	
)	
at premises)	
2309 18th Street N.W.)	
Washington, D.C. 20009)	
)	

BEFORE: Ruthanne Miller, Chairperson
Donald Brooks, Member
Herman Jones, Member
Hector Rodriguez, Member
Mike Silverstein, Member
James Short, Member

ALSO PRESENT: Notta Tav Urne, LLC t/a Pi Restaurant, Petitioner

Alireza Hajaligholi, Owner, on behalf of Petitioner

Lennon Duggan, Duggan Brothers, LLC, on behalf of Petitioner

Richard Bianco, Esq., Counsel for Petitioner

Benedicte Aubrun, Reed-Cooke Neighborhood Association, Protestant

Denis James, Kalorama Citizens Association, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**ORDER DENYING PROTESTANTS' MOTION FOR RECONSIDERATION AND
CLARIFYING BOARD ORDER NO. 2014-274**

This matter comes before the Alcoholic Beverage Control Board (Board) on the Petition to Terminate a Settlement Agreement filed by Notta Tav Urne, LLC, t/a Pi Restaurant (Petitioner).

Procedural History

On September 9, 2013, Pi filed a timely Petition to Terminate a Settlement Agreement (“Petition”) requesting that the Board terminate its settlement agreement entered into with the Kalorama Citizens Association (“KCA”) and the Reed-Cook Neighborhood Association (“RCNA”) (collectively the “Protestants”). The Board approved the settlement agreement on February 14, 2005. The Journey Group, Inc. t/a Blue Fin Sushi, Application No. 60833-05/007P, 2 (D.C.A.B.C.B. Feb. 14, 2005) [*Settlement Agreement*]. Subsequently, protests against the Petition were filed by the Protestants in accordance with District of Columbia (D.C.) Official Code §§ 25-601(1) and 25-602. *ABRA Protest File No. 13-PRO-00124*.

After the Protest Hearing on April 10, 2014, the Board issued Board Order No. 2014-274 in which it made the following Orders:

- (1) Pi is permitted to apply for an Entertainment Endorsement;
- (2) The Board struck the language of the Settlement Agreement which states: “Hours of Operation for possible future rear deck summer garden: 11:30 a.m. until 11:00 p.m. seven days a week.” The Board will consider the issue of the rear deck summer garden’s hours as part of an application for a substantial change;
- (3) The Board struck the provision in the Settlement Agreement requiring that the Petitioner maintain a sushi menu at all times;
- (4) The Board struck the provision in the Settlement Agreement that restricts the Petitioner from applying to a change in its license class; and
- (5) The Board struck the provision in the Settlement Agreement which restricts the Occupancy permitted in the establishment.

Notta Tav Urne, LLC t/a Pi Restaurant, Case No. 13-PRO-00124, Board Order No. 2014-274, 1-2 (D.C.A.B.C.B. July 30, 2014).

PETITION FOR RECONSIDERATION OR CLARIFICATION

On August 11, 2014, the Petitioner filed a Motion for Reconsideration or Clarification in response to Board Order No. 2014-274. *ABRA Protest File 13-PRO-00124, Motion for Reconsideration*, dated August 11, 2014 [*Petitioner’s Motion*]. In his Motion, the Petitioner seeks to clarify whether the Board intended Board Order No. 2014-274 to allow Pi to apply for a change in its hours of operation for the entire establishment, or for its rear deck only. *Id.* at 2.

Additionally, to the extent the Board takes the position that its Order allows Pi to apply for additional hours on its rear deck only, Pi seeks reconsideration of such determination. *Id.* More specifically, the Petitioner argues that the restriction in the Voluntary Agreement on the sale hours for Sunday through Wednesday is not in line with establishments in the relevant geographic area and restricts the Licensee from applying for extended holiday hours. *Id.* at 3. Finally, the Petitioner seeks permission to apply for extended holiday hours.

PROTESTANTS' MOTION FOR RECONSIDERATION

On August 11, 2014, the Protestants also filed a Motion of Reconsideration in response to Board Order No. 2014-274. *ABRA Protest File 13-PRO-00124, Motion for Reconsideration*, dated August 11, 2014 [*Protestants' Motion*]. In their Motion, the Protestants seek reconsideration of three of the Board's Conclusions of Law issued in Board Order No. 2014-274. *Id.* at 2.

First, the Protestants request that the Board reconsider its ruling that Pi is no longer required to maintain a sushi menu at all times and request that instead of this provision being deleted in its entirety, this provision be revised to read "Pi is required to have food at all times of operation." *Id.* at 2-3.

Next, the Protestants challenge the Board's striking of the language of the settlement agreement which states: "Hours of Operation for possible future rear deck summer garden: 11:30 a.m. until 11:00 p.m. seven days a week." *Id.* at 3. The Protestants argue that this action unreasonably, and without community notice, allows the Applicant to operate its rear deck at the same hours of the inside of the establishment. *Id.*

Finally, the Protestants seek reconsideration of the Board's removal of provision 4 of the settlement agreement entitled "Occupancy 4." *Id.* at 4. Provision 4 states:

The Basement dining area and bar shall not exceed: 40, or the number of persons allowed by DCRA on a separate Certificate of Occupancy for the basement level, whichever number is smaller.

Upon issuance of separate Certificate of Occupancy for the basement level, the Parties agree to fill in and initial the section below.

Total as shown on DCRA-issued Certificate of Occupancy for the basement level at 2309 18th Street, NW is _____. Basement of 2309 18th Street, NW, Certificate of Occupancy permit no. _____ and date of issuance _____.

Total allowable occupancy of the establishment: ____.

Accepted by Applicant ____ Date _____ RCNA _____ Date _____.

Id. at 4-5; *Notta Tav Urne, LLC t/a Pi Restaurant*, Case No. 13-PRO-00124, Board Order No. 2014-274 (D.C.A.B.C.B. July 30, 2014).

Accordingly, the Protestants argue that if there is a more recent Certificate of Occupancy on file with ABRA, then the Board should keep this provision and add the corresponding terms to modified Agreement: *Id.* at 4-5.

DISCUSSION

The Board clarifies in this Order that the Petitioner is permitted to apply for a substantial change to amend its hours for both inside the establishment and on the exterior deck. Additionally, the Board makes clear that the Petitioner may apply to ABRA for the extended holiday hours privilege. The Board finds that allowing the Petitioner to apply to amend its hours comports with privileges granted to neighboring establishments and would not have an adverse impact on the peace, order and quiet of the neighborhood.

The Board denies the Protestants' Motion on the grounds that Protestants failed to demonstrate any error of law in its previous order. See 23 DCMR § 1719.3. The Board finds that the Protestants have failed to present any convincing arguments that the Board erred as a matter of law with respect to the relief granted of which Protestants complains. More specifically, the Protestants posit additional amendments that they believe the Board should impose on the Parties and their Settlement Agreement. The Board advises both Parties that they are free to amend the terms of their settlement agreement at any time on their own.

Furthermore, the Protestants argue that the Board should maintain the original occupancy provision while filling in the missing terms between the parties. The Board reaffirms its position that this provision, including the numerous blank terms, does not show an express intent of either party to be bound. *Notta Tav Urne, LLC t/a Pi Restaurant*, Case No. 13-PRO-00124, Board Order No. 2014-274 (D.C.A.B.C.B. July 30, 2014). The Board will not maintain or fill in a provision the parties have not chosen to fulfill since the Agreement was first executed in 2005. Accordingly, the Board upholds its decision in Board Order No 2014-274 to delete this provision from the Settlement Agreement in its entirety.

ORDER

Therefore, based on the foregoing, the Board, on this 10th day of December 2014, **DENIES** Protestants' Motion for Reconsideration; and **CLARIFIES** its original Board Order No. 2014-274.

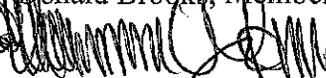
The Board further **ADVISES** that the Parties are free to amend the terms of the settlement agreement on their own at any time.

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

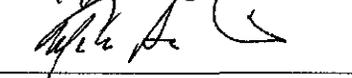
District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Donald Brooks, Member


Herman Jones, Member


Hector Rodriguez, Member


Mike Silverstein, Member


James Short, 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, 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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). 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).