

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

---

In the Matter of:	)	
	)	
Café Dullul, Inc.	)	License Number: 014272
t/a Rendezvous Lounge	)	Case Number: 11-PRO-00012
	)	Order Number: 2011-305
Petition to	)	
Amend a Voluntary Agreement	)	
for a Retailer’s Class CT License	)	
	)	
at premises	)	
2226 18th Street, N.W.	)	
Washington, D.C. 20009	)	

---

BEFORE:            Nick Alberti, Interim Chairperson  
                      Donald Brooks, Member  
                      Herman Jones, Member  
                      Calvin Nophlin, Member  
                      Mike Silverstein, Member

ALSO PRESENT:    Café Dullul, Inc., t/a Rendezvous Lounge, Petitioner

Olivier Kamanda, Advisory Neighborhood Commission (ANC) 1C,  
Protestant

Denis James, Kalorama Citizens Association (KCA), Protestant

**ORDER DENYING PROTESTANTS’ MOTION TO DISMISS PETITION TO  
AMEND VOLUNTARY AGREEMENT**

Café Dullul, Inc., t/a Rendezvous Lounge (Petitioner), filed a Petition to Amend its Voluntary Agreement for its Retailer’s Class CT License (Petition), which has been protested by Advisory Neighborhood Commission (ANC) 1C, represented by ANC Commissioner Olivier Kamanda, and the Kalorama Citizens Association (KCA), represented by Denis James (collectively the “Protestants”). The Petition was originally dismissed at the Roll Call Hearing on February 28, 2011. Nevertheless, the Alcoholic Beverage Control Board (Board) reinstated the Petition because the Petitioner demonstrated good cause for failing to appear at the Roll Call Hearing. Café Dullul, Inc. t/a Rendezvous Lounge, Board Order No. 2011-171 (D.C.A.B.C.B. Apr. 6, 2011). The Status Hearing was held on April 27, 2011, and Mediation has not been held yet. The Protest Hearing is scheduled for July 6, 2011, at 1:30 p.m.

The Protestants have submitted a Motion to Dismiss the Petition (Motion). First, the Protestants, citing D.C. Code § 25-446(d)(3), argue that the Petitioner did not submit

its Petition within its renewal period, as required by law, because the Board did not post notice of the Petition until after the renewal period. Second, the Protestants argue that Petitioner has not satisfied D.C. Code §§ 25-446(d)(4)(A)(i) and 25-446(d)(4)(A)(ii) by failing to make efforts to locate, contact, and negotiate with the other party to the Voluntary Agreement. Third, the Protestants argue that the Petitioner has not shown a need for an amendment under D.C. Code 25-446(4)(B).

We deny the Protestants' Motion.

As a matter of law, there is no requirement that the notice of the Petition be posted during the Petitioner's renewal period. The law states: "The Board *may accept* an application to amend or terminate a voluntary agreement by fewer than all parties in the following circumstances: (A) During the license's renewal period; and (B) After 4 years from the date of the Board's decision initially approving the voluntary agreement." D.C. Code § 25-446(d)(2)(A)-(B) (Supp. 2011) (emphasis added). There is no requirement in § 25-446 that the notice of the Petition be posted during the Petitioner's renewal period. As such, the Protestant's interpretation of the law is incorrect.

Furthermore, the Board rejects the Petitioner's arguments that the Petitioner cannot assert a prima facie case for amending its Voluntary Agreement. In order to resolve a motion to dismiss, the Board must determine "whether the complaint includes well-pleaded factual allegations as an initial matter, and whether such allegations plausibly give rise to an entitlement for relief." Mazza v. Housecraft LLC, 18 A.3d 786, 790 (D.C. 2011).

First, the record indicates that the Petitioner will likely be able to prove that it has satisfied D.C. Code § 25-446(d)(2)(A). Section 25-446 requires the Petitioner to make "a diligent effort to locate all other parties to the voluntary agreement" and make "a good-faith attempt to negotiate" an amendment. § 25-446(d)(2)(A)(i)-(ii). The Board has repeatedly stated that attending the mediation provided by the Board under D.C. Code § 25-445 is sufficient to satisfy § 25-446(d)(2)(A). NHV Corporation, Inc., t/a Haydee's Restaurant, Board Order No. 2011-151, 5 n. 1 (D.C.A.B.C.B. Mar. 9, 2011); NHV Corporation, Inc., t/a Haydee's Restaurant, Board Order No. 2008-189, para. 83 (D.C.A.B.C.B. Apr. 23, 2008). Consequently, based on the Board's prior precedent, once the parties attend the Mediation, § 25-446(d)(2)(A) will likely be satisfied. As such, the Protestant's arguments regarding § 25-446(d)(2)(A) must be rejected by the Board because, at the very least, there is a question of material fact as to whether the Petitioner has complied with § 25-446(d)(2)(A) that should be resolved at the Protest Hearing.

Second, we find that the Petitioner has alleged sufficient facts to create a question of material fact as to whether there has been a change of circumstance beyond the control of the Petitioner or a change in the neighborhood. § 25-446(d)(2)(B). The Board notes that when it is confronted with a Motion to Dismiss from a Protestant, the Board must construe the Petition in the light most favorable to the Petitioner by taking the facts alleged in the Petition as true. Mazza, 18 A.3d at 790.

Here, the Petitioner has alleged that there is a significant disparity between its sidewalk café hours and the hours of its neighbors. The Petitioner also argues that the imposition of the smoking ban by the Government of the District of Columbia, which was

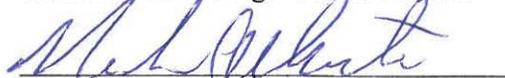
implemented after the Voluntary Agreement was signed, is a significant change. Based on these facts, the Board finds that there is a question of material fact as to whether the Petitioner has satisfied § 25-446(d)(2)(B), which the Board can only address after a full hearing. For these reasons, the Motion is denied.

On a final note, the Board is aware that ABRA's Mediation Specialist has attempted to schedule a Mediation session with the parties, but the Protestants have resisted committing to a day and time. The Board notes that ABRA's Mediation Specialist and ABRA's Deputy General Counsel have made the Protestants aware that the Board voted to deny their Motion on June 8, 2011. We remind the parties that they are obligated to cooperate with ABRA's mediation process and "not unreasonably refuse to make [themselves] available" to attend Mediation. D.C. Code § 25-445(d) (2001).

### ORDER

The Board does hereby, this 29th day of June 2010, **DENY** the Motion to Dismiss. Copies of this Order shall be sent to the Petitioner, ANC 1C, and the KCA.

District of Columbia  
Alcoholic Beverage Control Board

  
\_\_\_\_\_  
Nick Alberti, Interim Chairperson

  
\_\_\_\_\_  
Donald Brooks, Member

  
\_\_\_\_\_  
Herman Jones, Member

\_\_\_\_\_  
Calvin Nophlin, Member

  
\_\_\_\_\_  
Mike Silverstein, 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, Reeves Center, 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. 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) (2004).