

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

Toran Investment Group, Inc.)	Case No.:	N/A
t/a Risky Ventures)	License No.:	097484
<i>Applicant</i>)	Board Order No.:	2015-118
)		
Application for a New)		
Retailer's Class CR License)		
)		
at premises)		
1824 Columbia Road, N.W.)		
Washington, D.C. 20009)		

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

ALSO PRESENT: Toran Investment Group, Inc., t/a Risky Ventures, Applicant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

NOTICE OF APPLICATION DENIAL AND ORDER

The Alcoholic Beverage Control Board (Board) issues the following Order based on the information obtained during the Board's review of the Application. If challenged, this Order will be deemed the Board's Proposed Order. If unchallenged within the appropriate timeframe, this Order will represent the final decision of the Board. Further instructions for the Applicant may be found below the signature line.

INTRODUCTION

The Alcoholic Beverage Control Board (Board) denies the Application for a New Retailer's Class CR License (Application) at premises 1824 Columbia Road, N.W., filed by

Toran Investment Group, Inc., t/a Risky Ventures, (Applicant) based on the failure of the Applicant to demonstrate to the satisfaction of the Board that it has the ability to operate a bona fide restaurant in accordance with District of Columbia (D.C.) Official Code § 25-113(b).

Procedural Background

The Application for Risky Ventures was published on December 19, 2014. The Board held a Fact Finding Hearing related to the Application on March 4, 2015.

FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, and the documents comprising the Board's official file, makes the following findings:

I. BACKGROUND

1. Risky Ventures applied for a Retailer's Class CR License at premises 1824 Columbia Road, N.W. *Notice of Public Hearing* (Risky Ventures).

2. In its Application, the owner, John Toran, averred that "Risky is a Prepared Food Shop. The total [number] of seats is 9. The occupancy load is 9. The food will consist of deli sandwiches, gourmet popcorn, and potato chips." *ABRA Application*, Question 15 (Risky Ventures). The owner provided a copy of his proposed menu, which featured nine varieties of popcorn, six sandwiches, three soups, dessert brownies, potato chips, and two varieties of non-alcoholic beverages. *Menu*, 1-2.

3. At the Fact Finding Hearing on March 4, 2015, the owner informed the Board that Risky Ventures does not have a "kitchen," but rather a "food preparation area." *Transcript (Tr.)*, March 4, 2015 at 3. The food preparation area has a three compartment sink and a table. *Id.* at 4. The owner will also be purchasing a refrigeration unit. *Id.* Further, he would not have a stove inside the establishment. *Id.* He also would not have pots and pans and only four or five bowls. *Id.* at 33. He further stated that he would use paper plates to serve food to customers. *Id.* at 29.

4. At the hearing, the owner suggested that he was considering additional food offerings. *Id.* at 5. For example, he was considering offering croissants and smoothies in the morning. *Id.* at 3. He also was considering purchasing a "George Foreman Grill" in order to make "creative . . . grilled cheese sandwich[es]." *Id.*

5. The owner further suggested that he would consider advertising the establishment as a place for "pop-up restaurants." *Id.*

6. Mr. Toran was also considering engaging in sous-vide cooking at the establishment. *Id.* at 6. Sous-vide cooking is a food preparation method where food is placed in vacuum packs and boiled. In this case, there is no evidence that Mr. Toran has the required permits, certifications, or equipment that allow this type of activity or any type of training related to sous-vide cooking. *Id.* at 7.

7. Mr. Toran further discussed his food service plans. *Id.* at 9. He noted that he would be ordering sandwiches from “So’s Your Mama Sandwiches,” which is located across the street. *Id.* at 9-11. He also stated that he would prepare chipotle and wasabi mayonnaises. *Id.* at 9. Mr. Toran admitted that the sandwich shop across the street closes at 8:00 p.m. *Id.* at 11. He noted that someone would likely have to walk across the street to pick up the sandwich. *Id.* at 12. At this time, the business only plans to add mayonnaise to the sandwich. *Id.* at 31. After the sandwich shop closes, Mr. Toran suggested that he would serve popcorn, potato chips, empanadas, and quiche. *Id.* at 12.

CONCLUSIONS OF LAW

8. The Board denies the Application based on the Applicant’s failure to demonstrate that it qualifies as a restaurant in compliance with D.C. Official Code §§ 25-113.

I. THE BURDEN OF PROOF LIES WITH RISKY VENTURES.

9. According to the D.C. Administrative Procedure Act (DCAPA), “. . . the proponent of a rule or order shall have the burden of proof.” D.C. Official Code § 2-509(b). In this case, the Applicant bears the initial burden of demonstrating that it satisfies all legal requirements required for licensure. *Citizens Ass’n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 195, 197 (D.C. 1979); *Tiger Wyk Ltd., Inc. v. D.C. Alcoholic Beverage Control Bd.*, 825 A.2d 303, 310-11 (D.C. 2003) *citing Haight v. District of Columbia Alcoholic Beverage Control Board*, 439 A.2d 487, 493 (D.C.1981).

10. In order to qualify for licensure, an applicant must comply with all statutes and regulations contained in Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations. D.C. Official Code § 25-301(a)(7). The Board may only issue a restaurant license to a “restaurant” under § 25-113(b)(1). Based on the record, the Board is not persuaded that Risky Ventures qualifies as a restaurant under either of the two tests provided by Title 25 of the D.C. Official Code.

II. RISKY VENTURES CANNOT DEMONSTRATE THAT IT SATISFIES § 25-113(A)(i).

11. First, Risky Ventures is not able to demonstrate to the satisfaction of the Board that it has the ability to operate as a restaurant. Under § 25-101(43)(A)(i), a restaurant must be “ready, willing, and able to prepare and serve food, have a kitchen which shall be regularly open, have a menu in use, have sufficient food on hand to serve the patrons from the menu, and have proper staff present to prepare and serve the food . . .” D.C. Official Code §§ 25-101(43)(A)(i); 25-113(b)(3)(B)(i)(I). The Board concludes that Risky Ventures will not have “sufficient food on hand.” § 25-101(43)(A)(i). The primary item on Risky Ventures’ menu is popcorn and sandwiches. *Supra*, at ¶ 2. Yet, under its current business plan, an employee must go across the street and obtain the sandwich from another vendor as sandwiches are ordered by customers. *Supra*, at ¶ 3. Under these circumstances, the Board cannot find that Risky Ventures qualifies as

a bona fide restaurant when one of the primary items on its menu is not stored or prepared on the premises. *Id.*

III. RISKY VENTURES CANNOT DEMONSTRATE THAT IT SATISFIES § 25-113(B)(i).

12. Second, the Board further concludes that Risky Ventures cannot qualify as a restaurant based on its inadequate kitchen. In addition to the definition provided under part (A), an establishment may also qualify as a restaurant under § 25-101(43)(B)(i) by “hav[ing] adequate kitchen and dining facilities.” D.C. Official Code §§ 25-101(43)(B)(i); 25-113(b)(3)(B)(i)(II). Risky Ventures does not have a stove, has no pots and pans, and has, at most, five bowls. Under these circumstances, the Board finds that Risky Ventures’ food preparation area does not qualify as an adequate kitchen under § 25-101(43)(B)(i).

ORDER

Therefore, the Board, on this 25th day of March 2015, hereby **DENIES** the Application.

IT IS FURTHER ORDERED that this Order shall convert into a proposed order if the Applicant filed a motion for reconsideration or requests a hearing. If no motion or hearing request is received by the Board within ten days of receipt of this Order, then this Order shall be deemed final.

IT IS FURTHER ORDERED that the Board’s findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

Copies of this Order shall be delivered to the Applicant.

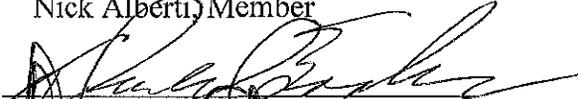
District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



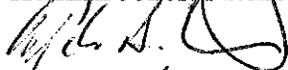
Nick Alberti, Member



Donald Brooks, Member



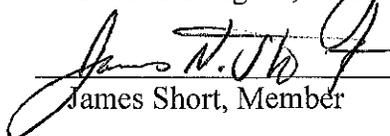
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Under 23 DCMR § 1719.1, you 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.

You also have the right to request a hearing before the Board conducted in accordance with subchapter I of Chapter 5 of Title 2. The hearing request should be made no later than ten (10) days of service of this Order. If you request a hearing, you may appear personally at the hearing, and you and the establishment, may be represented by legal counsel. You have the right to produce witnesses and evidence on your behalf and to cross-examine witnesses. You may examine evidence produced, and have subpoenas issued on your behalf to require the production of witnesses and evidence.

Please note that this hearing may result in an administrative action or order that impacts your rights; therefore, the hearing shall be conducted as a contested case hearing using the procedures provided by the D.C. Administrative Procedure Act (D.C. APA) (D.C. Official Code § 2-501 *et seq.*) and the protest procedures described in Title 23 of the D.C. Official Code (Title 23). See 23 DCMR § 1600.5, 1606.1-1606.8 (West Supp. 2014). Please also note that Title 25 of the D.C. Official Code (Title 25) places the burden of proof on the applicant to demonstrate through substantial evidence that he or she meets the requirements for licensure. *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 288 A.2d 666, 666-69, 671 (D.C. 1972); 23 DCMR § 1718.3 (West Supp. 2015).

All hearings are conducted in the English language. If you, any corporate officer, or any witnesses to be called are deaf, have a hearing impediment, or cannot readily understand or communicate the spoken English language, an application may be made to the Board for the appointment of a qualified interpreter.

Your failure to appear at the time and place set for the hearing, if requested, either in person or through counsel, or both, will not preclude the Board from proceeding in this matter, or deeming this Order final. Should you have any questions, contact ABRA Adjudication Specialist Danette Walker at 202-442-4418.

The Board reserves the right to amend this notice in accordance with D.C. Official Code § 2-509 based on new information that is discovered during the hearing process. The Board also reserves the right to schedule additional hearings to address preliminary motions or additional information received by the Board during the hearing process.

Finally, 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).