

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

In the Matter of:

Terminal Alley, LLC
t/a Terminal Alley

Applicant for a New
Retailer's Class CT

at premises
3701 Benning Road, N.E., B
Washington, D.C. 20019

Case No. 14-PRO-00027
License No. ABRA-093986
Order No. 2014-404

Terminal Alley, LLC, t/a Terminal Alley (Applicant)

David L. Burka, Agent, Celia Properties, LP

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

**ORDER ON SETTLEMENT AGREEMENT AND
WITHDRAWAL OF PROTEST OF CELIA PROPERTIES, LP**

The Application filed by Terminal Alley, LLC, t/a Terminal Alley, for a new Retailer's Class CT License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on April 14, 2014, and a Protest Status Hearing on July 23, 2014, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant and Celia Properties, LP have entered into a Settlement Agreement (Agreement), dated October 6, 2014, that governs the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and David L. Burka, on behalf of Celia Properties, LP, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by Celia Properties, LP.

Accordingly, it is this 29th day of October, 2014, **ORDERED** that:

1. The Application filed by Terminal Alley, LLC, t/a Terminal Alley, for a new Retailer's Class CT License, located at 3701 Benning Road, N.E., Washington, D.C., is **GRANTED**;
2. The Protest of Celia Properties, LP in this matter is hereby **WITHDRAWN**;
3. The above-referenced Settlement Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications:

Section 2 (Nature of the Business) – The following sentence shall be modified to read as follows: “Any change to this model shall be of great concern to the Parties which they may bring the ABC Board's attention. The Parties acknowledge that any change in operations requires prior Board approval.”

Section 3 (Parking Arrangements) – The following sentence shall be modified to read as follows: “The Applicant will take measures to ensure that no patrons vehicles are parked on the access easement or on the abutting property which is located within 3924-3968 Minnesota Avenue, N.E., Square 5044, Lot 812.”

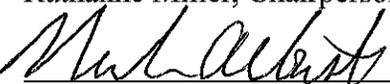
Section 4 (Notice and Opportunity to Cure) – The following sentence shall be modified to read as follows: “If Applicant or the licensee fails to cure within the 15-day period, it is an emergency action, or there is repetition of a prior breach then such failure or action shall constitute a cause for filing a complaint with the ABC Board pursuant to D.C. Official Code § 25-446 (3).”

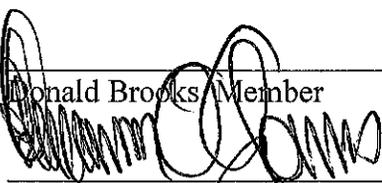
The parties have agreed to these modifications.

4. Copies of this Order shall be sent to the Applicant and David L. Burka, on behalf of Celia Properties, LP.

District of Columbia
Alcoholic Beverage Control Board

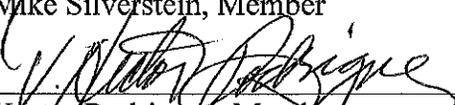

Ruthanne Miller, Chairperson

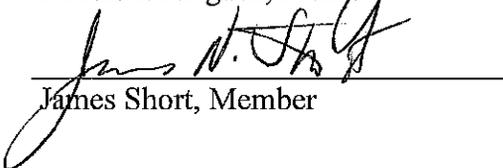

Nick Alberti, Member


Donald Brooks, Member

Herman Jones, Member


Mike Silverstein, Member


Hector Rodriguez, Member


James Short, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any Party adversely affected by this Order may file a Motion for Reconsideration within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 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 D.C. Official Code § 25-433, 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).

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made on this 6th day of October, 2014 by and between Terminal Alley LLC, License # 09386 ("Applicant"), and Celia Properties, LP ("Protestant"), (collectively, the "Parties").

WITNESSETH

WHEREAS, Applicant has applied for a License Class CT, License Number 09386, for a business establishment ("Establishment") located at 3701 Benning Road N.E., 2nd Floor Rear, Washington, D.C. ("Premises");

WHEREAS, Protestant is Celia Properties, LP, who owns the property adjacent to the Premises, and filed a timely protest (the "Protest") against the issuance of the Applicant's license application pursuant to D.C. Official Code § 25-601(1);

WHEREAS, the Parties have agreed to enter into this Agreement and request that the Alcoholic Beverage Control Board ("ABC Board") approve the Applicant's license application conditioned upon the Applicant's compliance with the terms of this written Agreement; and

WHEREAS, the Parties are desirous of entering into a Settlement Agreement pursuant to D.C. Official Code § 25-446 for the operation and maintenance of the Establishment in such a manner as to minimize the effect on parking and vehicular and pedestrian safety as it relates to the use of the access easement leading to Licensee's property,¹ and to eliminate the need for a Protest Hearing regarding the license application.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the Parties agree as follows:

1. ***Recitals Incorporated.*** The recitals set forth above are incorporated herein by reference.
2. ***Nature of the Business.*** The Applicant will manage and operate a new tavern and cigar bar. Any change from this model shall be considered by both Parties to be a substantial change in operation and requires prior approval by the ABC Board.

¹As indicated on the attached map labeled Attachment A, the access easement on Protestant's property is an alley, extending from Benning Road southerly, approximately 503 feet, by a width of 25 feet, part of which is adjacent to and along the east side of the Protestant's property, as well as a second alley extending from the west side of the main alley in a westerly direction for 117 feet, adjacent to and along the north side of the Applicant's real property, which has a width of 30 feet at the east end and a width of 40 feet at the west end.

3. ***Parking Arrangements.*** It is a principal concern of the Protestants that the Applicant's operation of the Establishment does not create or exacerbate parking problems. The Applicant will take measures to ensure that no patron vehicles are parked on the access easement or on the abutting property owned by Protestants. These measures include the following:
- a. Maintain a minimum of six (6) parking spaces located outside of the entrance to Terminal Alley for use by Terminal Alley patrons;
 - b. Arrange for, and maintain, a contract for services to provide sufficient off-site parking for its patrons;
 - c. Provide valet services, and having the valet staging area located on the Applicant's property; and
 - d. Notify patrons that parking is prohibited on the access easement and on Protestant's adjacent property.
4. ***Notice and Opportunity to Cure.*** In the event that any of the parties is in breach of this Agreement, it shall be entitled to reasonable notice and opportunity to cure, as a condition precedent to seeking enforcement of the Agreement. Unless the breach is of an emergency nature or is a repetition of a prior breach, reasonable notice and opportunity shall provide for a cure within 15 days of the date of such notice. If Applicant or the licensee fails to cure within the 15-day period, it is an emergency action, or there is repetition of a prior breach then such failure or action shall constitute a cause for seeking a Show Cause Order from the ABC Board pursuant to D.C. Official Code § 25-447. Unless otherwise noted above, any notices required to be made under this Agreement shall be in writing and mailed via certified mail, return receipt requested, postage prepaid, or hand-delivered, to the other parties to this Agreement at the following addresses. Notice shall be deemed given as of the time of receipt or refusal of receipt:

If to Applicant: Terminal Alley, LLC
Attn: Theodore Clements
3701 Benning Road, NE
2nd Floor Rear
Washington, DC 20019

With copy to:
Paul L. Pascal, Esq.
Pascal & Weiss, PC
1008 Pennsylvania Ave, SE
Washington, DC 20009

If to Protestants: Celia Properties, LP
C/O David Burka
Delbe Real Estate Co Inc, AAMC
Suite 500
4200 Wisconsin Ave NW
Washington, DC 20016

With copy to:
Roderic Woodson, Esq.
Holland & Knight, LLP
800 17th Street, NW
Washington, DC 20006

Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the ABC Board or any other enforcement action.

5. *Withdrawal of Protest.* Upon execution of this Agreement by the Parties and its acceptance by the ABC Board, Protestants shall withdraw the Protest.

PROTESTANT:
Celia Properties, LP

DAVID L BURKA, AGENT
By: Name/Title

David L Burka
Signature

APPLICANT:
Terminal Alley, LLC

Theodore J Clements Owner
By: Name/Title

Theodore J Clements
Signature



Attachment A to October 2014 Settlement Agreement between Terminal Alley LLC Licence #09386 and Celia Properties, LP.