THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:		
HRH Services, LLC t/a The Alibi	License No: Case No.: Order No:	097969 15-PRO-00096 2016-418
Applicant for a New Retailer's Class CR License		
237 2nd Street, N.W. Washington, D.C. 20001		

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

ALSO PRESENT: HRH Services, LLC, t/a The Alibi, Applicant

Richard Bianco, Counsel, Hessler & Bianco Group, on behalf of the Applicant

Charles Parsons, Counsel, on behalf of the Abutting Property Owners Protestants

Karen Wirt, Chairperson, Advisory Neighborhood Commission (ANC) 6C, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING THE MOTION FOR RECONSIDERATION

INTRODUCTION

In Dr. Suess's beloved children's book *Horton Hatches the Egg*, Mayzie, a lazy bird, convinces Horton the Elephant, to promise to sit on her egg while she goes on vacation. Dr.

Suess, Horton Hatches the Egg (1940). Mayzie never returns, and Horton faces numerous hardships, including facing exposure to the elements, belittlement, mortal danger, and a kidnapping. *Id.* Nevertheless, despite these difficulties, Horton keeps his promise and remains on the egg, because, as he says,

> I meant what I said
> And I said what I meant . . .
> An elephant's faithful
> One hundred per cent!

Id.

Certainly, an elephant would not forget the events that led to the Order approving the license application filed by HRH Services, LLC, t/a The Alibi (hereinafter "Applicant" or "HRH"). *In re HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-00096, Board Order No. 2016-280, 3 (D.C.A.B.C.B. May 16, 2016). Specifically, among other issues,

> In light of concerns regarding HRH's compliance with the law, the [Alcoholic Beverage Control] Board ordered HRH to show that it qualified for licensure. Specifically, the Board required HRH to demonstrate that it was not engaging in subterfuge to allow Mr. Scahill to obtain a license without the legally required review of his qualifications for licensure.

Id. In response to these issues, during trial

> HRH through witnesses and representations by counsel indicated that HRH is completely separate from Mr. Scahill, will maintain the barring notice for five years, will bar him from the premises, and will accept additional conditions to enforce these representations.

Id. at ¶¶ 87, 90, 95.

Operating under the presumption that HRH meant what it said, and said what it meant, at trial, the Board adopted these statements into conditions, which resulted in Mr. Scahill being barred from the premises for a period of five years. *Id.* at 3. In response to the Order, HRH filed a motion for reconsideration, which limits reconsideration to solely the "*duration*" of the condition barring Mr. Scahill from the premises, a reduction of the amount of time Martin Scahill must be banned from the premises, and a request to deem Martin Scahill fit for licensure. *Motion for Partial Recon.*, 1. Because HRH's motion departs substantially from HRH's position at trial, the Board finds it fair to say that HRH is no Horton.

ISSUES UNDER REVIEW

The reasoning provided by HRH is a potent mixture of dubious, illogical, and unsupported assertions. First, HRH claims that the Board has not provided sufficient justification for imposing the five year ban under D.C. Official Code § 25-104(e) despite the

ownership's claim that they would enforce and maintain a barring notice for five years. *Id.* at 2; *infra*, at ¶ 1. Bizarrely, despite claiming that the condition is unlawful, HRH solely asks the Board to convert the alleged unlawful five year ban into an unlawful one year ban, if the Board accepts HRH's argument. *Id.* at 1.[1] Second, HRH—without citation to an authority, law or precedent—claims that the Board should not have relied on Martin Scahill's ownership history to justify imposing the five year ban or rendering a negative judgment on the fitness of the Traversos (even though the Board found the Traversos fit for licensure under D.C. Official Code § 25-301(a)(1)). *Id.* at 3. And finally, despite getting exactly what it asked for, HRH argues in equity that the condition is unfair. *Id.* at 4

In opposition, the Abutting Property Owners (Protestants) ask the Board to deny the motion for reconsideration. First, the Protestants argue that granting the motion would require the Board to reopen the record and reconsider the issuance of the license because the Order was based on the imposition of conditions for a five year period. *Resp. to Mot.*, 2-5. Second, the Protestants argue that information related to Martin Scahill is relevant. *Id.* at 6-9. Third, the Protestants argue that the motion fails to comply with the rules governing motions for reconsideration and fails to provide valid reasons for granting the request. *Id.* at 9-11.

The Board agrees with the Protestants and denies the motion. The Board further explains the procedural and substantive reasons for denying the motion below.

FINDINGS OF FACT

1. In denying the motion, the Board considers the following facts:

2. At the hearing on January 29, 2016, the issue of barring Martin Scahill for a period of five years was specifically addressed by Richard Traverso, one of the owners. The following responses show that he indicated that he would enforce the barring notice for five years.

> MR. ALBERTI: You have a barring notice on him. Will you allow him back on your property -- remember you're under oath -- from today until the five years from January 27, 2016, will you allow Mr. Scahill on your property?
>
> MR. TRAVERSO: With the barring notice? No, I will not.

Transcript, January 29, 2016 at 267.

> MR. ALBERTI: You'll assure [us] that this bar notice is in effect for five years?
>
> MR. TRAVERSO: I will.

Id. at 270.

[1] The Board deems this a waiver of the right to have the restriction completely overturned.

> MR. ALBERTI: If . . . we issued a board order that said we will grant this license with the condition that the barring notice presented today stays in effect for five years from the date on which it was issued by you, or signed by Mr. Scahill. What's your view[] on that?
>
> MR. TRAVERSO: I would not be happy, I hate to have any restrictions on it, *but I think we have to live with it. If it came to that, we would.*

Id. at 275-76 (emphasis added).

> MR. ALBERTI: . . . Could the business succeed with that restriction? Would there be any impediment to its success with that restriction?
>
> MR. TRAVERSO: No.

Counsel for HRH during closing statements affirmed the statements of Mr. Traverso by stating

> And the last thing and what I think is probably most important and the most talked about was the barring notice. [Martin Scahill is] barred from the premises and Rich Traverso, when really put to it by Mr. Alberti about whether or not he would be willing to keep that in place for five years said yes, and I think any reluctance probably comes from me because we try to fight for licenses without restrictions.

Id. at 428-29.

> One of the things we preach on this side of the bar is trying to get licenses without restrictions. So, reluctantly so, but we think it's extremely important that – I don't know whether they'd be willing to accept it but they're the ones that brought it to the table. They – they didn't wait for the board to come in and say "yes, you can have your license but on these conditions" so they take their – they take their business serious enough to take that – to take that step and *would be willing to take it a step further if that's what the board wanted to do.*

Id. (emphasis added). It should be noted that HRH never sought to correct the record or otherwise clarify the statements made by Mr. Traverso during the trial or after closing arguments.

CONCLUSIONS OF LAW

The Board denies the motion for both procedural and substantive reasons.

I. HRH Has Waived its Objections to Consideration of Evidence Related to Martin Scahill and My Brother's Place.

3. HRH's objection to consideration of evidence related to Martin Scahill and My Brother's Place is untimely and undeveloped; therefore, these objections are deemed waived.

a. Despite having adequate notice, HRH failed to timely object to consideration of evidence related to Martin Scahill or My Brother's Place before or during the trial.

4. HRH's argument that "the Applicant did not spend its time, effort, evidence and credibility before the Board trying to justify or disprove conduct which has been attributed to Scahill" is not well taken based on the notice sent to HRH before the hearing. *Mot. for Part. Recon.*, 1.

5. It is well known that a party must "take his objection at the earliest possible opportunity when, by doing so, he can enable the trial judge to take the most efficacious action." *Timms v. United States*, 25 A.3d 29, 36 (D.C. 2011).

6. In the notice, identified as Board Order No. 2016-020, sent to HRH before the hearing, the Board specifically instructed the parties that the Board would consider evidence and records related to Martin Scahill and My Brother's Place. *In re HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-00096, Board Order No. 2016-020, 1, ¶¶ 2-3, 37 (D.C.A.B.C.B. Jan. 13, 2016) [*Alibi Notice*]. It is also not lost on the Board that the findings in the notice were extensive and pin cited, and that the findings in the final Order are very similar to the findings contained in the notice due to the lack of rebuttal evidence or objections contained in the record. *Compare Alibi Notice*, Board Order No. 2016-020, at ¶¶ 1-36 *to In re HRH Services, LLC, t/a The Alibi*, Board Order No. 2016-280 at ¶¶ 1-36. Consequently, despite having adequate notice and time to prepare, HRH chose not to raise an objection or present rebuttal evidence during the hearing. *see also Tr.*, 1/29/16 at 29 (no party objected when the Board announced that it was taking official notice of records related to Martin Scahill or My Brother's Place despite having advanced notice of the specific records and proposed findings). Consequently, HRH's argument that evidence related to Martin Scahill or My Borther's Place should be excluded is deemed waived for failing to raise a proper objection.

b. Section II of motion for reconsideration fails to adequately develop HRH's argument related to this evidence; therefore, the argument is waived.

7. It is also well known that "Objections must be made with reasonable specificity" in order to fairly apprise "the judge [and the other party] . . . as to the question on which" a ruling is requested . *Id. citing Perkins v. United States,* 760 A.2d 604, 609 (D.C. 2000). When a party "merely . . . mention[s] a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones" this leads to the waiver of any claims presented in such a manner. *In re Beg Investments, LLC, t/a Twelve Restaurant & Lounge*, Case No. 12-CMP-00431, Board Order No. 2014-087, ¶19 (D.C.A.B.C.B. Apr. 23, 2014) *citing Kamit Inst. for Magnificent Achievers v. D.C. Pub. Charter Sch. Bd.*, 81 A.3d 1282, 1289 n. 25 (D.C. 2013) *citing Comford v. United States*, 947 A.2d 1181, 1188 (D.C. 2008).

8. Here, HRH acknowledges that a large portion of the Board's "39 page decision" relates to Martin Scahill. *Mot. for Part. Recon.*, 3. Nevertheless, HRH fails to explain why each individual factual finding related to Martin Scahill or My Brother's Place within those 39 pages does not relate to any of the elements of the statutes under review. Moreover, Section II of HRH's motion does not cite any authority whatsoever supporting its legal argument and requested action. This failure on the Applicant is particularly disappointing because the Board's final Order contains internal pin cites that reference the specific facts relied upon by the Board in reaching each specific legal conclusion; therefore, it would have been easy for HRH to identify a specific conclusion of law made by the Board and the corresponding fact supporting the conclusion. For this reason, the Board deems the argument made by the HRH in Section II of the motion waived for lack of argumentation.

II. Evidence Related to Martin Scahill and My Brother's Place was Relevant to the Qualifications Hearing.

9. Furthermore, although not expressly stated—which is quite odd considering that an entire section of the motion appears dedicated to the point—HRH apparently argues that evidence related to Martin Scahill or My Brother's Place is not relevant to this matter. *Mot. for Part. Recon.*, at 3.[2]

10. The Board's regulations require the Board to rely on "reliable, probative, and substantial evidence." 23 DCMR § 1718.3 (West Supp. 2016). Under the rules of evidence, relevant evidence "makes the existence or nonexistence of a . . . fact more or less probable that it would be without the evidence." *Jones v. United States*, 739 A.2d 348, 350 (D.C. 1999) *citing Punch v. United States,* 377 A.2d 1353, 1358 (D.C.1977) (quotation marks removed). It has been said that the test of relevance "is not a particularly stringent one." *Id. citing Street v. United States,* 602 A.2d 141, 143 (D.C.1992). Consequently, a court's ruling on matters of relevance "rest[] within the sound discretion of the court." *Id. citing Blakeney v. United States,* 653 A.2d 365, 368 (D.C.1995) (citation omitted).

11. In *GII Restaurant and Lounge,* a prior case relying on § 25-301(a)(5), the Board found relevant and relied upon the "alleged misdeeds" and licensing history of a third party allegedly controlling the applicant. *In re Proof Lounge, LLC, t/a GII Restaurant & Lounge*, ABRA License No. 87228, Board Order No. 2011-496, ¶¶ 13-15, 18 (D.C.A.B.C.B. Dec. 14, 2011); *Mot. for Part. Recon.*, 3.

12. This case largely focused on whether HRH complied with D.C. Official Code § 25-301(a)(5). *In re HRH Services, LLC, t/a The Alibi,* Board Order No. 2016-280 at 5. Under § 25-301(a)(5), the Board is examining whether HRH is a subterfuge to allow Mr. Scahill to obtain a license without approval from the Board. *Id.* at ¶¶ 97, 128. The history of Martin Scahill and My Brother's Place is particularly relevant to this question because the question is whether Mr.

[2] In the motion, the HRH argues that the evidence at issue was "beyond the scope of the hearing" without citation to a legal authority or mention of the term "relevance." Based on the arguments contained in the motion, the Board can only presume that HRH meant relevance and not another type claim.

Scahill is attempting to evade the requirements of the law; thus, at a minimum, the facts contained in the Order are directly relevant to showing the motive and intent of HRH's owners and Mr. Scahill. *Id.* at ¶ 98(2). Therefore, HRH's argument that evidence and facts related to Martin Scahill and My Brother's Place are not relevant lacks merit and contrary to the precedent of the Board.

III. Alternatively, Based on the Conditions Imposed by the Board, Evidence Related to Martin Scahill and My Brother's Place Is Relevant Under § 25-104(e).

13. It should also be noted that these facts are also separately relevant to the issue of whether the conditions imposed by the Board satisfy D.C. Official Code § 25-104(e). Therefore, even if HRH's relevance arguments had any credence whatsoever, there are no grounds that justify excluding this information from the Board's findings of fact and conclusion of law based on the conditions imposed by the Order.

IV. HRH Cannot Introduce New Evidence into the Record Related to Martin Scahill or My Brother's Place under § 1719.4.

14. The Board rejects HRH's attempt to reopen the record to consider new evidence related to Mr. Scahill and My Brother's Place. *Mot. for Part. Recon.*, at 4 (saying "Mr. Scahill can present evidence . . . ." and arguing that Applicant did not present certain arguments and facts based on the issues.)

15. Under the regulation governing motions for reconsideration, "If a petition is based. . . on a new matter, that matter shall be set forth in an affidavit and be accompanied by a statement that the petitioner could not by due diligence have known or discovered the new matter prior to the date the case was presented to the Board for decision." 23 DCMR § 1719.4 (West Supp. 2016).

16. As noted above, the HRH had specific notice of potential factual findings and issues related to Martin Scahill and My Brother's Place. HRH further had the ability to call Mr. Scahill to testify to dispute ABRA's records before the hearing. Indeed, Rachel Traverso, HRH's witness, contributed new information related to Mr. Scahill and My Brother's Place into the record during her testimony without objection. *In re HRH Services, LLC, t/a The Alibi*, Board Order No. 2016-280, at ¶¶ 33, 36, 37-38. HRH also never requested a continuance or the opportunity to submit new evidence into the record. Moreover, HRH voluntarily introduced the issue of the barring notice. *Id.* at ¶ 83. Therefore, for these reasons, HRH has waived the opportunity to submit new evidence related into the record.[3]

---

[3] The Applicant's argument regarding the bank check is not well taken. The Applicant states that it has no intent to "create a factual dispute" by raising the issue of the check; yet, if the Board relied upon this argument, it clearly would. HRH's motion leaves out the specific statements made by Martin Scahill in his prior submission to the agency. Previously, Mr. Scahill claimed that "A certified check was presented to ABRA by Martin Scahill on July 31, 2013 to cover the previous fines but [it] could not be accepted due to a bounced check for the license renewal." *Letter from Martin Scahill, Substantial Evidence/Law*, 4. At no point in the hearing, even though it had plenty of opportunity to do so, did HRH present evidence that identified the employee, authenticated the check, showed that Mr. Scahill timely corrected the alleged deficiency that supposedly prevented him from paying, or otherwise

V. The Board Has No Obligation to Modify the Conditions in the Manner Proposed by HRH.

17. In this case, HRH, despite claiming that the five year condition is unlawful, bizarrely asks the Board to instead impose a one year ban. *Mot. for Part. Recon.*, at 1. Even if we accepted HRH's thesis, this means the HRH is asking the Board to convert an allegedly unlawful five year ban into an unlawful one year ban. Consequently, as a matter of logic, this request makes no sense.

18. Section 25-104(e) states that the "Board . . . *may* require" conditions as part of its decision to issue a license. D.C. Official Code § 25-104(e) (emphasis added). The law makes the imposition of conditions a matter of discretion; therefore, the Board is under no legal obligation to impose a specific condition. In this case, the Board will not grant HRH's requested action when it has no basis in reason and is not supported by the record.

19. The Board further agrees with the Protestants that the Order entirely relies on the imposition of a five year ban. *Resp. to Mot.*, 2-3. If this condition is deemed unlawful, it would render the approval and issuance of the license based on the imposition of the condition non-compliant with Title 25 of the D.C. Official Code for failing to make the appropriate findings required by law. Thus, the Board would likely have to "reopen and reconsider the entire matter to determine whether or not a license should be granted to the Applicant." *Id.* at 5.

20. Finally, granting the request would be highly prejudicial to the Protestants. During the hearing, HRH only discussed a five year ban and never mentioned or requested a one year ban. Consequently, the Protestants have not had a fair opportunity to present evidence or arguments opposing the request. As such, because the request is illogical, requires the reconsideration of the entire case, and prejudicial to the Protestants, the request is denied.

VI. HRH's Request to Deem Martin Scahill Fit for Licensure and New Hearing is Inappropriate.

21. HRH requests that the Board find Martin Scahill fit for licensure under § 25-301(a)(1), and then blithely sneaks in a request for a new hearing at the end of the motion.[4] *Part. Mot. for Recon.*, at 1, 6. This request is not appropriate, because the question of Mr. Scahill's fitness was

---

demonstrated that his claims are true. Consequently, the Applicant's argument on this point is not persuasive or otherwise justifies the inclusion of new evidence into the record.

[4] In its motion, HRH does not cite the specific authority under which the request is made; therefore, the Board presumes that HRH is solely referring to D.C. Official Code § 25-301(a)(1) based on the use of the term "fitness." *Mot. for Part. Recon.*, at 1. The motion is also confusing on this point because it appears to change the theories midstream. At one point, HRH argues that the Board should not judge Mr. Scahill's fitness but then, out of nowhere and without explanation, argues that the Board should not rely on Mr. Scahill's actions to judge the fitness of Rachel and Richard Traverso. *Mot. for Part. Recon.*, at 1, 4, 6. This argument is especially puzzling because the Board found both owners fit for licensure in the final Order. *In re HRH Services, LLC, t/a The Alibi*, Board Order No. 2016-280, at ¶¶ 123-128.

never raised before the motion for reconsideration or as part of HRH's application. Instead, the prior Order dealt solely with HRH's compliance with § 25-301(a)(5), HRH's qualifications for licensure, and the fitness of Rachel and Richard Traverso under § 25-301(a)(1). As a result, HRH's request to deem Martin Scahill fit for licensure is denied because it has nothing to do with the present controversy and has not been properly raised.[5]

VII. HRH Waived the Right to Challenge Its Own Stipulations.

22. The Board expressly noted in the Order that it deemed HRH's statements regarding the exclusion of Mr. Scahill as stipulations and a waiver of the right to obtain an unrestricted license. *In re HRH Services, LLC,* Board Order No. 2016-280 at 1, ¶ 93. The Board then noted that HRH had stipulated to be "completely separate from Mr. Scahill, will maintain the barring notice for five years, will bar him from the premises, and will accept additional conditions to enforce these representations." *Id.* at ¶ 95. Because HRH does not challenge these findings in its motion, HRH waives the right to challenge the stipulations and the waiver noted in the Order.

VIII. The Condition Imposed by the Board Satisfies § 25-104(e) and is Justified by the Record.

23. In its motion, HRH mischaracterizes the Board's Order by stating, "The justification by the Board for the extensive prohibition was that the Applicant served him with an MPD barring Notice . . . and both Richard and Rachel Traverso testified that they were willing to enforce it." *Part. Mot. for Recon.*, at 2. The Applicant then further misreads the Board's Order by stating, "the Board did not make findings that the condition was in the best interest" of the neighborhood and did not make the requisite findings under D.C. Official Code § 25-104(e). *Id.* This is incorrect.

24. In fact, in its Order, the Board indicated the imposition of the condition was in the best interest of the neighborhood in accordance with D.C. Official Code § 25-104(e) based on a material promise and stipulation of the Applicant regarding its future operations and because the condition ensured compliance with § 25-301(a)(5). *In re HRH Services, LLC, t/a The Alibi*, Board Order No. 2016-280, at ¶¶ 94, 96.

25. As noted in the Order, based on prior precedent, § 25-104(e) is satisfied when a condition is based on the "promises or pledges made by the applicant when they are relied upon to approve

---

[5] Allowing such a request would be contrary to the intent of Title 25 based on the lack of notice to the community. 1 Legislative History of the District of Columbia Beverage Control Act at 79 ("We feel that people who live in a neighborhood should be the judge of whether or not they want licenses to be issued in that locality, and [while] a man might be able to slip through . . . if you . . . [give protestants an] opportunity to be heard before the license is granted, it seems to me that you have an excellent check upon the character of the individual . . ."]), 80 (Corporate Counsel Bride stated, ". . . this business is charged with [the] public interest and . . . the people ought to be fully informed as to the character of the man . . . .); 276 (Rep. Black describing the policy of the repeal of prohibition as making the traffic in liquor ". . . legal and licensed, so that everybody in the community could know who was in the traffic, [and] what their characters were . . . .").

the application." *Id.* at ¶ 94. This is an appropriate interpretation of the law because to hold otherwise merely "invites [HRH] to operate contrary to [its] stated intentions and future plans, and creates an incentive for [HRH] to misrepresent [its] intentions to the Board, which is not in the best interest of the neighborhood . . . ." *Id.*[6] In this case, because the stipulation resolves the issues surrounding § 25-301(a)(5), converting the stipulation into a condition is completely justified.

26. Furthermore, it is entirely appropriate for the Board to accept and rely upon the stipulations of the HRH in this case. The District of Columbia Administrative Procedure Act, states that "any contested case may be disposed of by stipulation, agreed settlement, consent order, or default." D.C. Official Code § 2-509(a).[7] Moreover, "The power of the court to act in the disposition of a trial upon facts conceded by counsel is as plain as its power to act upon the evidence produced." *Oscanyan v. Arms Co.*, 103 U.S. 261, 263 (1880). In that vein, admissions made by counsel during trial may "substitute for evidence" and "possess the highest possible probative value." *Royall v. Weitzman*, 125 A.2d 680, 682 (D.C. 1956).

27. It is also eminently reasonable for the Board to impose conditions that ensure compliance with § 25-301(a)(5) or other laws based on a stipulation that resolves questions regarding a licensee's future compliance with the law. In this case, because the barring of Mr. Scahill for five years resolves any issue related to compliance with D.C. Official Code § 25-301(a)(5), it is entirely appropriate for the Board to convert HRH's stipulation into a condition of licensure.

28. Separately, even without the stipulation, the Board was well within its rights to impose the condition on its own, as noted in similar state court decisions cited in the Order. *In re HRH Services, LLC, t/a The Alibi*, Board Order No. 2016-280, at ¶¶ 94, 94 n.3, 98-105. The complete bar of an individual from the premises is an obvious means of preventing them from asserting unlawful control of the premises. Based on the suspicious relationship between HRH and Mr. Scahill identified in the Order, the imposition of a five year ban or enforcement of the barring notice for five years as a prophylactic measure to ensure compliance with § 25-301(a)(5) is eminently reasonable and appropriate. *In re HRH Services, LLC, t/a The Alibi*, Board Order No. 2016-280, at ¶ 118; *Bradford v. D. C. Hacker's License Appeal Bd.*, 396 A.2d 988, 989 (D.C. 1979) ("It is well settled that a state can undertake prophylactic measures that provide administrative economy in their attempt to respond to an otherwise legitimate goal. . . . .").

29. On a final note, the nature of a licensee's operation and its future plans are materially relevant to the decision to issue a license. *See id.* at ¶ 94 *citing In re Hak, LLC, t/a Midtown,* Case No. 13-PRO-00176, Board Order No. 2016-055, ¶ 37 (D.C.A.B.C.B. Feb. 17, 2016) *citing Donnelly* v. *D.C. Alcoholic Beverage Control Bd.*, 452 A.2d 364, 369 (D.C. 1982); *see also* D.C. Official Code §

---

[6] It also seems unjust to issue a license when a licensee that said it would operate one way in order to overcome a protest, and then allow the licensee to thumb its nose at the opposition and the Board by operating entirely opposite to its stated intentions without consequences.

[7] Based on the stipulation, it also questionable whether the Board even has to make any findings related to the condition whatsoever. *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 (West Supp. 2016).

25-762(a) ("nature of the operation"). Therefore, conditions that ensure that the establishment maintains a specific nature or abides by its stated future plans, as is the case here, inherently satisfy D.C. Official Code § 25-104(e).

30. Therefore, the Board finds that the Order complies with § 25-104(e). Furthermore, because HRH did not acknowledge the reasoning stated in the Board's Order or otherwise attempt to refute the Board's reasoning, HRH's objections to the conditions are deemed waived.

IX. HRH's Equity Argument that a Five Year Ban is Unfair is Unpersuasive in Light of the Material Issues of This Case and the Ten Year Review Look Back Period Provided by 25-301(a-1).

31. While ignoring the fact that the five year ban on Mr. Scahill was proposed by HRH, HRH complains that five year ban is unfair. HRH explains that because revocations result in a mandatory five year exclusion under D.C. Official Code § 25-821, had the Board revoked Mr. Scahill's license in 2013, then this period would not run as long as the period contained in the Order.[8] *Mot. for Part. Recon.*, at 4-5. This argument is unpersuasive for two reasons.

32. First, at a minimum, Title 25 of D.C. Official Code permits the Board to impose a ten year ban. Specifically, under § 25-301(a-1), in determining the character and fitness of an applicant, the Board may look back at least ten years when determining character and fitness of an applicant. D.C. Official Code § 25-301(a-1). Moreover, § 25-301(a)(3) bars felons from holding a license for ten years as well. HRH's argument is not well reasoned because it fails to consider these other parts of the law.

33. Second, HRH voluntarily stipulated to maintain and enforce the barring notice for five years. In this case, the Board is not aware of any rule of equity that says it is unfair to give someone exactly what they ask for or agree to. Consequently, if HRH has any regrets, it only has itself to blame.

ORDER

Therefore, for the reasons stated above, and the reasons stated by the Protestants, the Board, on this 29th of June 2016, hereby **DENIES** the motion for reconsideration. ABRA shall deliver a copy of this Order to the parties.

---

[8] This also ignores additional potential wrongdoing by Mr. Scahill after the end of My Brother's Place that may also be considered by the Board in the future or that My Brother's Place's investigative history may possibly merit denial on its own under § 25-301(a)(1) and (a-1). D.C. Official Code § 25-301(a)(1), (a-1); *In re HRH Services, LLC, t/a The Alibi*, Board Order No. 2016-280, at ¶¶ 27 ("potentially allowed his business partner to lie to an investigator"); 121 (indicating Mr. Scahill may have misrepresented his legal authority to dispose of corporate assets to HRH and the Board in violation of the law), 136 ("the record in this case does not exclude the possibility that Mr. Scahill forged the signature of Mr. Parsons on his own").

District of Columbia
Alcoholic Beverage Control Board

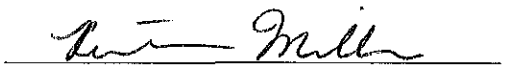
Donovan Anderson, Chairperson

Nick Alberti, Member

Mike Silverstein, Member

James Short, Member

I dissent for the reasons expressed in the prior Order.



Ruthanne Miller, Member

Under 23 DCMR § 1719.1 (West Supp. 2016), 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 § 1719.1 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).