

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

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Park Place, Inc.	)	Case Nos.:	13-PRO-00153
t/a The Park Place at 14th	)		14-PRO-00005
	)	License No.:	075548
	)	Order No.:	2014-259
Application for Renewal and	)		
Petition to Terminate	)		
Settlement Agreement for a	)		
Retailer's Class CN License	)		
	)		
at premises	)		
920 14th Street, N.W.	)		
Washington, D.C. 20005	)		

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

**ALSO PRESENT:** Park Place, Inc., t/a The Park Place at 14th, Applicant  
  
Makan Shirafkan, Counsel, on behalf of the Applicant  
  
John Patrick Brown, Jr., Counsel, on behalf of 1400 K Co., LLC  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) renews the Retailer's Class CN License held by Park Place, Inc., t/a The Park Place at 14th (hereinafter "Park Place" or "Applicant") and

finds good cause to amend the settlement agreement attached to the license. The Board's reasoning and changes to the agreement are described below.

### ***Procedural Background***

Park Place filed an Application to Renew a Retailer's Class CN License (Application) and a timely Petition to Terminate a Settlement Agreement (Petition) requesting that the Board renew its license and terminate a 2007 settlement agreement entered into with Advisory Neighborhood Commission (ANC) 2F and 1400 K. Co., LLC (1400 K). In re Park Place, Inc., t/a Park Place, Case No. 61135-07/014P, Board Order No. 2007-045, 1-2 (D.C.A.B.C.B. Aug. 15, 2007) (Order on Voluntary Agreement and Withdrawn Protests).

#### **A. Procedural Background Related to the Renewal Application**

On October 4, 2013, the Alcoholic Beverage Regulation Administration (ABRA) provided public notice of the Application. *Public Notice 13-PRO-000153* (Oct. 4, 2014). The notice indicated that the last day to object to the renewal of the license was November 18, 2013. Id. On or before November 18, 2013, the Board received a timely objection from 1400 K. *ABRA Protest File 13-PRO-00153*, Letter from John Patrick Brown, Jr., Counsel, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control (ABC) Board, 1-3 (Nov. 15, 2013).

The parties came before the Board's Agent for a Roll Call Hearing on December 2, 2013. The parties then appeared before the Board for a Protest Status Hearing on February 19, 2014.

#### **B. Procedural Background Related to the Petition to Terminate**

The Board reviewed the Petition and found that the Petition satisfied D.C. Official Code § 25-446(d)(2), because it was filed during the Petitioner's renewal period and after four years from the date the Board originally approved the settlement agreement at issue in this matter. The Petition also contained the affidavit required by § 25-446(d)(5). The Alcoholic Beverage Regulation Administration (ABRA) then provided notice of the Petition to the parties to the settlement agreement and the public in accordance with District of Columbia (D.C.) Official Code § 25-446(d)(3).

ABRA provided public notice of the Petition on January 10, 2014. *Notice of Public Hearing 14-PRO-00005* (Jan. 10, 2014). The notice indicated that the last day to file objections against the Petition was February 24, 2014. Id. The Petition was timely protested by 1400 K and ANC 2F. The ANC later withdrew its protest, leaving 1400 K as the sole protestant. In re Park Place, Inc., t/a The Park Place at 14th, Case No. 14-PRO-00005, Board Order No. 2014-090, 1-2 (D.C.A.B.C.B. Mar. 12, 2014) (Order on Withdrawal of Protest of ANC 2F).

In Board Order No. 2014-088, based on the similarity of the facts and legal issues surrounding the Application and Petition, the Board consolidated the matters into a single hearing. In re Park Place, Inc., t/a The Park Place at 14th, Case Nos. 13-PRO-00153, 14-PRO-00005, Board Order No. 2014-088, 1-2 (D.C.A.B.C.B. Mar. 12, 2014) (Order Granting Motion to Consolidate Protests).

The Protest Hearing in this matter occurred on March 26, 2014, where the parties argued their respective cases.

### **C. The Issues Under Consideration**

There are two issues that must be addressed by the Board in this Order. First, based on 1400 K's initial protest letters, the Board may only renew the Applicant's license if the Board finds that the request will not have a negative impact on peace, order, and quiet in the area located within 1,200 feet of the establishment. D.C. Official Code §§ 25-446(d)(4), 25-602. *ABRA Protest File No. 13-PRO-00153*, Roll Call Hearing Results (Dec. 2, 2013).

Second, the Board must also determine whether the Applicant's settlement agreement merits termination in accordance with D.C. Official Code § 25-446.

## **FINDINGS OF FACT**

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

### **I. Background**

1. Park Place holds a Retailer's Class CN License at premises 920 14th Street, N.W., and has a settlement agreement attached to its license. See generally *ABRA Licensing File No. 075548*. The Board approved the settlement agreement on August 15, 2007. In re Park Place, Inc., Board Order No. 2007-045, at 1-2. The agreement is between the Applicant, ANC 2F, and 1400 K. Id.
2. Park Place has no recorded violations in its investigative history. *Protestant's Exhibit No. 2, 2*.

### **II. Testimony of ABRA Investigator Earl Jones**

3. ABRA Investigator Earl Jones prepared the Protest Report related to this matter and investigated the Application and the Petition. *Transcript (Tr.)*, Mar. 26, 2014 at 23. The establishment is located in a C-4 zone. Id. Thirty licensed establishments operate within 1,200 feet of the establishment. Id. at 6. No schools, public libraries, or daycare centers are located within 400 feet of the establishment. Id. at 8.
4. ABRA Investigators monitored the establishment eleven times between March 3, 2014, and March 18, 2014. *Tr.*, 3/26/14, at 27, *Protest Report*, at 10-11. Investigators found no violations during the observation period. *Tr.*, 3/26/14 at 27. Investigator Jones did not notice any significant issues related to noise as well. Id. at 47-48. He also did not observe any trash in the area. Id. at 48.

5. Investigator Jones has conducted a number of investigations related to the establishment in the past. Id. at 37. He described the owner as cooperative and helpful during his investigations. Id. at 37.

6. Investigator Jones believed that the valet provision in the settlement agreement helped manage the parking and traffic situation in the neighborhood. Id. at 54-55. He noted that there is limited street parking in the neighborhood based on its location near 14th Street, N.W., K Street, N.W., and I Street, N.W. Id. at 55. There are also many nightclubs and restaurants in the area. Id. at 54. Therefore, the valet helps address the lack of street parking in the area. Id. at 54-55.

### **III. The Testimony of Marc Barnes**

7. Marc Barnes owns Park Place. Id. at 63. The establishment conducts nightlife activities and provides a space for special events. Id. at 65.

8. The establishment does not have residential neighbors and is surrounded by commercial businesses. Id. at 66.

9. Mr. Barnes has committed to maintaining a clean environment. Id. at 67. He regularly engages in vermin control in the alleys near the establishment. Id.

10. Mr. Barnes is also committed to keeping the valet. Id. at 68. He noted that the valet provides a valuable service for his customers and generates revenue. Id. at 68-69.

11. Mr. Barnes also regularly hires the MPD Reimbursable Detail to help police the area. Id. at 69. He also has employees working at a customer care station to assist with intoxicated patrons. Id. at 70. He also regularly hires an emergency medical technician (EMT) whenever the establishment is open. Id. Finally, the establishment has invested in an extensive security camera system. Id. at 81.

12. The property value tax assessment of the premises in which the establishment is located has risen from \$5.7 million in the previous year to \$8.3 million. Id. at 88.

13. Mr. Barnes believes that his settlement agreement merits termination. Id. at 91. He is not aware of any other establishment in the neighborhood with a settlement agreement. Id. In addition, he would continue to engage in policies that go beyond the bare minimum of the agreement, such as hiring the MPD Reimbursable Detail, providing free taxis to intoxicated patrons, having valet service, and maintaining cameras. Id. at 92-93, 97-98.

14. Mr. Barnes noted that his general policy is not to allow new patrons into the establishment after 1:30 a.m. or 2:30 a.m., depending on the night. Id. at 95.

15. Mr. Barnes also believes it is unfair that the settlement agreement prohibits him from selling his business without the permission of 1400 K. Id. at 96-97.

16. Mr. Barnes attempted to negotiate an amended settlement agreement with 1400 K and ANC 2F. *Tr.*, 3/26/14 at 151-52, 160. Mr. Barnes's wife notified both parties of his interest in terminating the agreement by email on September 9, 2013. *Petition to Unilaterally Amend or Terminate A Settlement Agreement*, 2 [Petition]; *Tr.*, 3/26/14 at 160. Mr. Barnes also had his attorney negotiate with 1400 K regarding the future of the settlement agreement. *Tr.*, 3/26/14 at 160. The parties to the settlement agreement engaged in negotiations, but Park Place was unable to reach an agreement with 1400 K.. *Petition*, 2. Mr. Barnes also negotiated with 1400 K at the ABRA-sponsored mediation session. *Tr.*, 3/26/14 at 151-52.

17. The establishment currently is permitted to have a sidewalk café large enough to hold twelve people. *Id.* at 121-22.

18. Mr. Barnes noted that the several competitors have moved into the area since the agreement was signed, including Lima, Opera, Lotus, Capital, Josephine's, and Tattoo. *Id.* at 156. He further noted those establishments do not have settlement agreements, which put his business at a competitive disadvantage. *Id.* at 156.

#### **IV. The Testimony of Simon Carney**

19. Simon Carney serves as 1400 K's regional counsel. *Id.* at 180. His company owns the building located at 1400 K Street, N.W. *Id.* at 181. The building has multiple tenants and retail tenants on the first floor. *Id.* Mr. Carney stated that it benefits 1400 K to have the agreement run to future owners of Park Place, because they cannot predict how future owners will operate the establishment. *Id.* at 184.

20. Mr. Carney also admitted that the parties have discussed changing various portions of the agreement in the past. *Id.* at 183, 202, 220; *see also id.* at 293.

#### **V. The Testimony of Jackie Duke**

21. Jackie Duke oversees operations for Brookfield Office Properties, which manages the property controlled by 1400 K. *Id.* at 246. The building at 1400 K Street, N.W., is used by tenants twenty-four hours a day, seven days per week. *Id.* at 247. The building provides security for tenants, as well as other services. *Id.*

22. Ms. Duke noted that Federal Express is a tenant of 1400 K. *Id.* at 249. Federal Express reported to 1400 K in 2010 that Park Place's patrons were outside, tapping on the retail establishment's window, and taunting their customers. *Id.* at 249, 258. On another day, another tenant complained that they found blood on their window. *Id.* at 251.

23. Ms. Duke believes the agreement keeps the neighborhood "... safe, neat and clean." *Id.* at 256. She believes Park Place has been a "... good neighbor." *Id.* at 268.

## CONCLUSIONS OF LAW: RENEWAL APPLICATION

24. The Board may approve an Application to Renew a Retailer's Class CN License if the Applicant demonstrates that the proposed establishment will not have an adverse impact on the area located within 1,200 feet of the establishment. D.C. Code §§ 25-104, 25-313(b) (West Supp. 2013); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014). Specifically, the issue in this case is whether the Application will have a negative impact on peace, order, and quiet; residential parking needs; pedestrian and vehicular safety; and real property values.

25. During renewal, "[t]he Board [also] consider[s] the licensee's record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license during the period of licensure, including the terms of a settlement agreement." D.C. Official Code § 25-315(b)(1).

26. The Board finds that Park Place has shown sufficient evidence to merit the renewal of its license. It is undisputed that Mr. Barnes regularly hires the MPD Reimbursable Detail to provide security, provides valet parking to his customers, and engages in extensive cleaning of the area outside the establishment. Supra, at ¶¶ 6, 9, 10, 11. There is no evidence that property values in the area have decreased due to the presence of Park Place. Supra, at ¶ 12. Further, as of the date of the hearing, Park Place has no recorded violations of Title 25 of the D.C. Official Code or its settlement agreement. Supra, at ¶ 2. Therefore, the Board finds that Park Place merits renewal of its Retailer's Class CN License.

## CONCLUSIONS OF LAW: TERMINATION PETITION

27. Under D.C. Official Code § 25-446(d)(1), "Unless a shorter term is agreed upon by the parties, a settlement agreement shall run for the term of a license, including renewal periods, unless it is terminated or amended in writing by the parties and the termination or amendment is approved by the Board. D.C. Official Code § 25-446(d)(1). Accordingly,

The Board may approve a request by fewer than all parties to amend or terminate a settlement agreement for good cause shown if it makes each of the following findings based upon sworn evidence:

- (A)(i) The applicant seeking the amendment has made a diligent effort to locate all other parties to the settlement agreement; or
  - (ii) If non-applicant parties are located, the applicant has made a good-faith attempt to negotiate a mutually acceptable amendment to the settlement agreement;
- (B) The need for an amendment is either caused by circumstances beyond the control of the applicant or is due to a change in the neighborhood where the applicant's establishment is located; and

- (C) The amendment or termination will not have an adverse impact on the neighborhood where the establishment is located as determined under § 25-313 or § 25-314, if applicable.

D.C. Official Code § 25-446(d)(4)(A)-(C).

28. The Board amends the settlement agreement based on changes to the law that have occurred since the agreement was executed in 2007. These changes will be described in the Order section.

**I. PARK PLACE SATISFIED § 25-446(D)(4)(A) BY ATTEMPTING TO NEGOTIATE AN AMENDED SETTLEMENT AGREEMENT IN GOOD FAITH WITH 1400 K AND ANC 2F.**

29. The Board finds that Park Place satisfied § 25-446(D)(4)(A) through its negotiation with the parties beginning in 2004.

30. Under § 25-446(d)(4)(A), in order to terminate or amend a settlement agreement when the other signatories have been located, it must be shown that “the applicant has made a good-faith attempt to negotiate a mutually acceptable amendment to the settlement agreement.” § 25-446(d)(4)(A)(i)-(ii).

31. In Hank’s Oyster Bar, the Board stated that a licensee satisfies its obligation to attempt to negotiate an amended settlement agreement in good faith by engaging in “honesty in fact in the conduct or transaction concerned.” § 25-446(d)(4)(A)(ii); In re Leeds the Way, LLC t/a Hank’s Oyster Bar, Case Number 10-PRO-00094, Board Order No. 2012-319, ¶ 54 (D.C.A.B.C.B. Sept. 12, 2012) citing Big Builders, Inc. v. Israel, 709 A.2d 74, 77 (D.C. 1998). Consequently, if the licensee engages in negotiations with the other signatories to its agreement, the Board will only deem such efforts unsatisfactory under § 25-446(d)(4)(A)(ii) if it is shown that the licensee engaged in “fraud, deceit, or dishonesty.” In re Leeds the Way, LLC t/a Hank’s Oyster Bar, Board Order No. 2012-319, at ¶ 55. The Board further notes that § 25-446(d)(4)(A) is not a mechanism to second guess a licensee’s negotiating position—whether reasonable or unreasonable. In re Multi-Management, Inc., t/a Habana Village, Case Number 13-PRO-00094, Board Order No. 2014-033, ¶¶ 32, 35 (D.C.A.B.C.B. Feb. 5, 2013)

32. Here, the record shows that all of the parties to the agreement engaged in negotiations over the agreement but reached an impasse.<sup>1</sup> Supra, at ¶¶ 16, 20. There is no allegation or evidence that Park Place in engaged in fraud, deceit, or dishonesty. Therefore, the Board finds that Park Place has provided sufficient evidence that it has satisfied § 25-446(d)(4)(A).

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<sup>1</sup> The Board notes that ANC 2F agrees with Park Place that the agreement merits termination; however, without the agreement of 1400 K, the agreement remains in effect unless terminated by the Board.

**II. PARK PLACE DEMONSTRATED THAT SOME OF THE PROVISIONS OF THE SETTLEMENT AGREEMENT MERITS AMENDMENT UNDER § 25-446(D)(4)(B) BASED ON A CHANGE IN THE LAW.**

33. Park Place has provided sufficient evidence to demonstrate that an amendment is warranted. Under § 25-446(d)(4)(B), in order to terminate or amend a settlement agreement, a licensee must show “[t]he need for an amendment is either caused by circumstances beyond the control of the applicant or is due to a change in the neighborhood where the applicant’s establishment is located.” § 25-446(d)(4)(B). The Board previously stated in Hank’s Oyster Bar that a change to the liquor law, which has a nexus to the settlement agreement attached to a applicant’s license, satisfies § 25-446(d)(4)(B). In re Leeds the Way, LLC t/a Hank’s Oyster Bar, Board Order No. 2012-319, at ¶¶ 57-63.

34. The Board approved the Park Place’s settlement agreement in 2007. Supra, at ¶ 1. As of May 1, 2013, the Council of the District of Columbia amended D.C. Official Code § 25-723 for the purpose of extending the legal hours of operation for all on-premise retail license holders on holidays and to place limits on settlement agreements, among other changes. D.C. Official Code §§ 25-446.01-25-446.02, 25-723; see generally Council of the District of Columbia, Omnibus Alcoholic Beverage Regulation Amendment Act of 2012, § 2 (effective May 1, 2013, D.C. Law 19-3210). Under the new law, settlement agreements may not (1) require the approval of third parties before a licensee may engage in an ownership change, § 25-446.02(1)(A); (2) require notice to third parties regarding the intent to transfer ownership, § 25-446.02(1)(B); (3) require the creation of restrictions that prevent a licensee from applying for changes to its operation, including changing its hours, § 25-446.02(1)(E); (4) require the creation of new administrative procedures beyond those required by ABRA or another D.C. agency, § 25-446.02(2); (5) require a licensee to attend meetings, § 25-446.02(3); and (6) require the licensee to submit documents to third parties. D.C. Official Code § 25-446.02(5).

35. Consequently, the Board finds that Park Place merits an amendment to its agreement that aligns the agreement with current law. Finally, the Board finds that Park Place did not make a sufficient showing that competition in the neighborhood or the addition of establishments to the neighborhood without settlement agreements constitutes a sufficient change under § 25-446(d)(4)(B). Supra, at ¶¶ 13, 18. Therefore, the Board denies the request for termination and solely approves the amendment of the agreement.

**III. PARK PLACE DEMONSTRATED THAT AMENDING THE SETTLEMENT AGREEMENT WILL NOT RESULT IN AN ADVERSE IMPACT UNDER § 25-446(D)(4)(C).**

36. The burden is on the Applicant to show that “[t]he amendment or termination will not have an adverse impact on the neighborhood where the establishment is located as determined under § 25-313 or § 25-314, if applicable.” § 25-446(d)(4)(C). The Board determines that amendments to a settlement agreement that align the agreement with current law shall generally be deemed not to have an adverse impact on the neighborhood. To do otherwise, would require the Board to act contrary to the intent of the Council of the District of Columbia when it amended Title 25 in 2013. Therefore, the Board finds that the amendments to the agreement,

which the Board will describe in its Order below, shall not have an adverse impact on the neighborhood.

#### **IV. THE BOARD'S ORDER GIVES ANC 2F'S ISSUES AND CONCERNS GREAT WEIGHT.**

37. The Board recognizes that an Advisory Neighborhood Commission's (ANC) properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643 (D.C. 1982); D.C. Official Code §§ 1-309.10(d); 25-609. Accordingly, the Board "must elaborate, with precision, its response to the ANC[s] issues and concerns." Foggy Bottom Ass'n, 445 A.2d at 646. The Board notes that it received a recommendation from ANC 2F.

38. The Board agrees with ANC 2F's recommendation to renew the Applicant's license. Letter from Matt Raymond, Chairperson, ANC 2F to Martha Jenkins, General Counsel, ABRA (Mar. 7, 2014).

39. ANC 2F further recommends that the Board terminate the agreement for the following reasons: (1) the agreement is unfair and discriminatory; and (2) the concerns of a commercial property holder should not be given as much weight as concerns raised by residents. Id.

40. The Board considered the recommendation of ANC 2F, but found the ANC's position regarding the Petition unpersuasive. First, the settlement agreement was a contract entered into by mutual agreement of the parties in this case; as a result, it cannot be characterized as unfair or discriminatory.<sup>2</sup> Second, Title 25 does not require the Board to provide less weight to the testimony and evidence provided by a commercial property owner. Consequently, for these reasons, the Board is unconvinced by the recommendation of ANC 2F related to the Petition.

#### **V. THE PETITIONER SATISFIED ALL REMAINING REQUIREMENTS REQUIRED BY TITLE 25.**

41. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants in their initial protest. 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. Accordingly, based on the Application, the Petition, and this matter's record, the Board finds that Park Place has satisfied all remaining requirements imposed by Title 25 and Title 23 to merit renewal of its license and the amendment of its settlement agreement.

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<sup>2</sup> In Malloff, the District of Columbia Court of Appeals stated, "[t]erminating this *voluntary* agreement—negotiated so that each party gained benefits and relinquished rights—without first attempting to salvage the agreement by amending it, was unfair." Malloff v. District of Columbia Alcoholic Beverage Control Board, 43 A.3d 916, 921 (D.C. 2012). As a result, it appears the court strongly favors the unilateral amendment of an agreement, rather than the unilateral termination, when possible.

## ORDER

Therefore, the Board, on this 16th day of July 2014, hereby **GRANTS** the Application to Renew a Retailer's Class CN License filed by Park Place, Inc., t/a The Park Place at 14th.

**IT IS FURTHER ORDERED** that the settlement agreement entered into by Park Place, 1400 K, and ANC 2F shall be amended as follows:

1. The Board strikes the following sentence from section 2 (*Nature of Business*): "Any change from this model shall be considered by all Parties to be a substantial change in operation of great concern to residents and requires prior approval by the ABC Board."<sup>3</sup>
2. The Board strikes all of section 3 (*Hours of Operation*).<sup>4</sup>
3. The second sentence of section 9 (*Rat and Vermin Control*) shall be struck and replaced with the following: "Applicant shall provide proof of its rat and vermin control contract upon the request of the Board."<sup>5</sup>
4. The last sentence of section 11 (*License Ownership*) shall be struck.<sup>6</sup>
5. Section 12 (*Participation in the Community*) shall be struck.<sup>7</sup>

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<sup>3</sup> Only the Board has the authority to determine whether a change constitutes a substantial change under D.C. Official Code § 25-762(a)-(b). Therefore, this specific provision must be struck because it runs contrary to the law and creates a new substantial change procedure, which is prohibited by § 25-446.02(2).

<sup>4</sup> This provision requires Park Place to abide by the hours of operation in the agreement, requires notice to parties regarding special events, and restricts patrons from entering the club after certain times. The Board notes that current changes to the law allow licensees to operate beyond the hours outlined in the agreement and § 25-446.02(1)(E) prohibits provisions that prevent the licensee from changing its hours; therefore, this portion of the provision merits removal. The Board further eliminates the notice provision, because this constitutes an additional administrative procedure in violation of § 25-446.02(2). The Board further eliminates the prohibition on new patrons entering the premises after certain times, because the phrase "new patrons" is too vague to be enforced, does not provide fair warning of what is proscribed, and the Board lacks confidence that an investigator can properly distinguish between new and current patrons. See 23 DCMR § 1609.7 (The Board may reject or modify a settlement agreement submitted to the Board when it "exceeds the Board's expertise to enforce . . .") The Board further eliminates the last paragraph of section 3, because it provides no fair warning of what constitutes "problems" and "good faith solutions" and is too vague to be enforced. *Settlement Agreement*, § 3; *id.*

<sup>5</sup> The original language of this provision requires the licensee to submit documentation to the protestants. The Board deletes this provision, because § 25-446.02(5) now prohibits provisions that require the submission of documents to third parties.

<sup>6</sup> As written, this provision imposes a notice requirement on Park Place and deems such an event a substantial change. The Board notes that this provision requires notice in violation of D.C. Official Code §§ 25-446.02(1)(A) and (B) and creates new administrative procedures in violation of § 25-446.02(2). Therefore, the provision must be deleted.

<sup>7</sup> Settlement agreements may not require the licensee to attend meetings under § 25-446.02(3). Therefore, this provision must be deleted.

**IT IS FURTHER ORDERED** that all other provisions of the settlement agreements shall remain in full force and effect.

ABRA shall provide copies of this Order to the Petitioner, ANC 2F, and 1400 K.

District of Columbia  
Alcoholic Beverage Control Board



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, Member

I concur with the majority's decision to renew the Applicant's license as well as to amend the settlement agreement. However, I would go further and terminate the agreement. The majority does not address the evidence in the record supporting the appropriateness of terminating the agreement as a whole. Further, in my view, the majority undervalues the changed circumstances in the neighborhood since the parties entered into the Settlement Agreement in 2007 and the impact on the establishment, including the arguments to this effect raised by ANC 2F to which great weight is to be afforded. When the Licensee entered into a Settlement Agreement six years ago, it did so in light of great uncertainty and concern by the ANC and MPD regarding what adverse impacts the establishment might have on the peace, order and quiet of the neighborhood. These were projected adverse impacts. In the six years that ensued, the Licensee has had no violations and maintains his establishment at the highest standards with respect to cleanliness, safety, traffic and compliance with the law. In fact, the Licensee goes well beyond the requirements set forth in the Settlement Agreement. Accordingly, neither the ANC nor MPD have protested the renewal of the application. Further, the ANC, also a party to the agreement, supports the termination of the agreement. The ANC argues that it no longer requires all applicants to enter into a settlement agreement with them and that this establishment is unique among other similar establishments in the Commercial Business District in being subject to a settlement agreement. Accordingly, the ANC states that it is unfair and discriminatory treatment to require this Applicant to continue to be subject to a settlement agreement.

The ANC also notes that the abutting neighbor, the party opposing the termination, is a commercial property. While the building on that property is accessible to employees 24 hours a day, the employees primarily work there in the day time when Applicant's establishment is not in operation. Moreover, the record reflects that the Applicant has been a good neighbor.

While the Applicant has shown that it has met all three tests under D.C. Official Code § 25-446(d)(4)(A)-(C) for terminating the agreement, i.e., diligent efforts to negotiate, need for the termination is beyond the control of the applicant or due to a change in the neighborhood where applicant's establishment is located, and termination of the agreement will have no adverse impact on the neighborhood in which the establishment is located as determined under § 25-313

or § 25-314 (appropriateness standards), the Board has chosen to selectively amend provisions based solely on changes in the law and not on changes in the neighborhood.

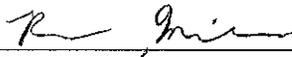
In Leeds the Way, LLC, t/a Hank's Oyster Bar, Case No. 10-PRO-00094, Order No. 2012-319(D.C.A.B.C.B. Sept 12, 2012), this Board found that changes in the law affected the character of the neighborhood and the value of the agreement, and terminated the entire agreement. We did not dissect the agreement provision by provision. We stated with respect to our interpretation of § 25-446(d)(4)(B) as follows:

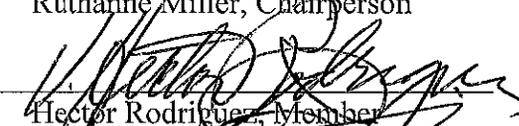
Previously, we have interpreted the test created by (B) broadly. For example, in dicta in Haydee's Restaurant, we wrote that the licensee could make the necessary showing in (B) by, for example, pointing to the new shopping center in the neighborhood; highlighting demographic and income changes; presenting evidence that the voluntary agreement no longer provided any benefit to the community; or showing that the neighborhood was undergoing severe economic distress. In the Matter of NHV Corporation, Inc., t/a Haydee's Restaurant, Case No. 10-PRO-00113, Board Order No. 2011-51, 5-6 n. 1 (D.C.A.B.C.B. Mar. 9, 2011). Likewise, in Madam's Organ, we said that the addition of a new D.C. Circulator route through the neighborhood qualified as a change to the neighborhood. In the Matter of 2461 Corporation, t/a Madam's Organ, Case No. II-PRO-00016, Board Order No. 2012-250, 3 (D.C.A.B.C.B. Jun 6, 2012).

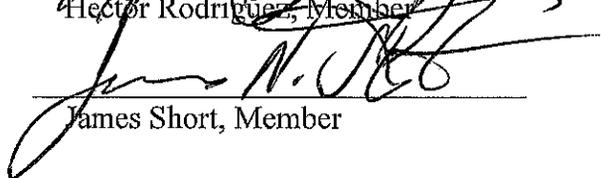
Id. at ¶ 59.

It appears that there was good reason for the parties to enter into a Settlement Agreement six years ago. Now that reason no longer exists. It makes little sense to leave a Settlement Agreement with little teeth but still a burden and a stigma to be borne by the Licensee. A Licensee who has proven to be a good neighbor and who has voluntarily gone beyond what is required by law in furtherance of peace, order and quiet, should not be sentenced with a settlement agreement that has not been found necessary to serve the appropriateness goals, while its competitors who entered the market after the Applicant without pressure to sign a settlement agreement have a competitive advantage to operate without such constraints.

In sum, the tests for termination have been met, good cause has been shown and the Board should grant the petition to terminate in accordance with our decision in Hank's, supra, and the cases cited therein.

  
\_\_\_\_\_  
Ruthanne Miller, Chairperson

  
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Hector Rodriguez, Member

  
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James Short, Member

Under 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, 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).