

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

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In the Matter of:	)		
	)		
Naomi's Ladder, LLC	)	Case No.:	15-PRO-00023
t/a Touche	)	License No:	096779
	)	Order No:	2016-351
Application to Renew a	)		
Retailer's Class CT License	)		
	)		
at premises	)		
1123 H Street, N.E.	)		
Washington, D.C. 20002	)		

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

**ALSO PRESENT:** Naomi's Ladder, LLC, t/a Touche, Applicant

Jay Williams, Chairperson, Advisory Neighborhood Commission (ANC)  
6A

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 current protest before the Alcoholic Beverage Control Board (Board) addresses the Application to Renew a Retailer's Class CT License (Application) filed by Naomi's Ladder, LLC, t/a Touche, (hereinafter "Applicant" or "Touche"). The Board concludes that noise generated by Touche's roof intereferes with the reasonable expectation oef residents to enjoy peace and quiet in their homes during late night hours. Therefore, the Board conditions renewal on the reduction of hours of the rooftop to midnight on Friday, Saturday, and holidays, and 11:00 p.m. on all other days. Moreover, the Board prohibits the production of amplified sounds on the roof between 10:00 p.m. and 9:00 a.m. Touche is also advised that it has an obligation to comply

with the terms of the Settlement Agreements attached to its license. The Board's reasoning is provided below.

### ***Procedural Background***

The Notice of Public Hearing advertising Touche's Application was posted on October 27, 2015, and informed the public that objections to the Application could be filed on or before April 13, 2015. *ABRA Protest File No. 15-PRO-00023*, Notice of Public Hearing [*Notice of Public Hearing*]. The Alcoholic Beverage Regulation Administration (ABRA) received protest letters from Advisory Neighborhood Commission (ANC) 6A. *ABRA Protest File No. 15-PRO-00023*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on April 27, 2015, where the ANC was granted standing to protest the Application. On July 22, 2015, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on April 6, 2016.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. *See Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (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 properly adopted written recommendation from ANC 6A. The ANC's issues and concerns shall be addressed by the Board in its Conclusions of Law, below.

Based on the issues raised by the Protestants, the Board may only grant the Application if the Board finds that the request will not have an adverse impact on the peace, order, and quiet of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2016). It is further noted that during opening statements, ANC 6A limited its protest to requesting "reasonable limitations on the operations of Touche's roof deck." *Transcript (Tr.)*, April 6, 2016 at 21-22.

### **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. Touche has submitted an Application to Renew a Retailer's Class CT License at 1123 H Street, N.E., Washington, D.C. *Notice of Public Hearing*.

## **II. Facts Provided by ABRA Investigator Abyie Ghenene**

2. ABRA Investigator Abyie Ghenene investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 15-PRO-00023, Protest Report* (Mar. 2016) [*Protest Report*]. The establishment is located in a C-2-A zone. *Id.* at 2. At least twenty-three licensed establishments are located within 1,200 feet of the proposed location. *Id.* There are no schools, recreation centers, or public libraries within 400 feet. *Id.* at 3.
3. According to the Protest Report, Touche's hours of entertainment last from 5:00 p.m. to 2:00 a.m., Monday through Thursday; 5:00 p.m. to 3:00 a.m. on Friday; and 10:00 a.m. to 3:00 a.m. on Saturday. *Id.* at 4.
4. The Protest Report describes Touche's investigation history. The report indicates that Touche has been the subject of six noise complaints between March 25, 2015, and March 25, 2016. *Id.* at 5. The report further indicates that Touche paid a \$1,000 related to inadequate import permits. *Id.* at 6.
5. Touche is located on the same block as several businesses. *Tr.*, 4/6/16 at 36. The tavern is located in a three story building. *Id.* The first floor has a kitchen and bar on the first floor. *Id.* The second floor has a bar and dining area. *Id.* The rooftop is licensed as a summer garden. *Id.* The roof is not enclosed and three of the walls of the roof are only waist high. *Id.* at 60.

## **III. Facts Provided by Tim Franklin**

6. Tim Franklin lives about 150 feet from the establishment. *Id.* at 62. He noted that noise generated from many establishments in the neighborhood may be heard on his property. *Id.* at 73, 80.

## **IV. Facts Provided by Dwayne Greenwood**

7. Dwayne Greenwood works at a retail establishment next door to Touche. *Id.* at 85. As a patron of Touche he has never observed live entertainment on the roof of the establishment. *Id.* at 86. Mr. Greenwood noted that the H Street, N.W., neighborhood is generally a noisy area. *Id.* at 89.

## **V. Facts Provided by Megan Uzzell.**

8. Megan Uzzell lives on G Street, N.E., approximately seventy-five yards from the back of Touche. *Id.* at 97. She can see Touche from the back of her home. *Id.* Ms. Uzzell discussed noise problems related to Touche. *Id.* On two to three occasions over the past year, she has heard amplified music and an amplified voice coming into her home, even though her air conditioner was on, the rear of her home has been soundproofed, and the windows and doors of her home were closed. *Id.* at 97-99, 110, 131. The noise she heard came from Touche's roof. *Id.* at 100, 116, 123. She noted that noise from the prior establishment located on Touche's premises caused her to add soundproofing to her home. *Id.*

## **VI. Facts Provided by Katherine Paniagua**

9. Katherine Paniagua lives on 12th Street, N.E. *Id.* at 138. She lives approximately one hundred feet from the establishment and can see the premises from her bedroom window. *Id.* at 139.

10. Ms. Paniagua has submitted about ten noise complaints related to Touche's roof to ABRA. *Id.* at 139-40. The noise she heard in her home consists of amplified music, an amplified voice, and patrons. *Id.* at 139. The noise routinely came after midnight, even with her windows and doors closed. *Id.* at 140, 142. Ms. Paniagua can confirm the disturbing noise entering her home comes from Touche because she can see the establishment. *Id.* at 140, 143.

## **VII. Facts Provided by Denise Corte**

11. Denise Corte lives on 12th Street, N.E. *Id.* at 159. Her home is located next to Ms. Paniagua's home. *Id.* She is located approximately seventy meters from Touche. *Id.* She experiences the same noise problems created by Touche reported by Ms. Paniagua, even though she keeps her windows and doors closed. *Id.* at 160-61, 163, 168. While she has never heard live music on Touche's roof, she has heard noise from amplified voices and patrons in her home. *Id.* at 169.

## **VIII. Facts Provided by Claude Labbe**

12. Claude Labbe lives on Linden Place, N.E., between 12th Street, N.W., and 13th Street, N.W. *Id.* at 172-73. He has noticed that the voices of patrons standing on the roof carry to Linden Place, N.E. *Id.* at 176, 179.

## **IX. Facts Provided by ANC Commissioner Phil Toohajian**

13. ANC Commissioner Phil Toohajian lives on 10th Street, N.E., approximately three blocks from Touche. *Id.* at 191. He represents Single Member District 6A02 and chairs ANC 6A. *Id.* In his role as an ANC Commissioner, he has received many complaints from residents living close to the establishment. *Id.* at 192. He further indicated that the number of complaints regarding Touche outpaces complaints regarding other establishments in his district, which encompasses part of the H Street, N.E., entertainment area. *Id.* at 192-93. Specifically, his constituents indicate that noise from Touche interferes with their ability to sleep inside their homes. *Id.* at 208.

14. Commissioner Toohajian has observed that Touche has advertised multiple events featuring disc jockey entertainment on the roof. *Id.* at 230.

## **X. Facts Provided by Jay Williams**

15. ANC Commissioner Jay Williams serves as the co-chair of ANC 6A's Alcohol Beverage Licensing Committee. *Id.* at 240. Similar to Commissioner Toohajian, Commissioner Williams has received a number of complaints regarding Touche. *Id.* at 243.

16. A photo submitted by the ANC shows an event on Touche's rooftop with many standing patrons. *Protestant's Exhibit No. 8*. Another photo shows a woman in front of a table with a laptop and turntable on Touche's rooftop, which constitutes a disc jockey booth. *Protestant's Exhibit No. 9*. The table also has a table cloth that reads "DJ Curley Sue." *Id.*

17. An advertisement related to an event at Touche indicates that the establishment hosted an event, titled "Sundresses & Whiskey," on July 25, 2015 between 3:00 p.m. and 8:00 p.m. *Protestant's Exhibit No. 11*. The event indicates that it was a "Rooftop Edition" event with music provided by "DJ Utmost Sash." *Id.*

18. An advertisement related to another event at Touche indicates that the establishment hosted an event, titled "Roots Rock Reggae Rooftop Party," on July 19, 2015, between 10:00 p.m. and 2:00 a.m. *Protestant's Exhibit No. 12*. The advertisement indicates that the event was hosted by "DJ Trini." *Id.*

## **XI. Relevant Provisions of Touche's Settlement Agreement**

19. Section 1.3(c) of Touche's First Settlement Agreement prohibits "live bands or musical entertainment on the roof deck" but allows "soft background music [to] be played for dining." *In re BEG Investments, t/a Twelve*, Case No. 61245-07/040P, Board Order No. 2007-140, at First Settlement Agreement, § 1.3(c) (D.C.A.B.C.B. Oct. 31, 2007) (entered into with a group of residents). In § 1.3(e), the agreement provides that Touche shall "manage sound that originates from the rooftop/deck and ensure that sound does not become noise to those who reside next door and beyond in the residential community." *Id.* at § 1.3(e) (underlining removed). The agreement further limits the roof deck's operation to no later than midnight, between Sunday and Thursday, and 2:00 a.m. on Friday and Saturday. *Id.* at § 1.4(a).

20. Section 4(c) of Touche's Second Settlement Agreement prohibits Touche from amplifying "sounds on the rooftop" except for pre-recorded music under certain conditions. *Id.* at Second Settlement Agreement, § 4(c) (entered into with the ANC). The agreement outlines various soundproofing measures on the rooftop and limits the "seating capacity" to "50 persons" and limits usage of the rooftop to dining. *Id.* The agreement further indicates that "the rooftop will be utilized on for dining, and therefore will not be utilized beyond hours of food service, and will not be used for events in which patrons are standing ([i.e.], receptions, private parties[, etc.])."

21. The Second Settlement Agreement further provides, in § 4(e), that

In the event that noise from conversations and pre-recorded music on the rooftop repeatedly disturbs homeowners to the rear of the building, the ANC and owner will work in good faith to negotiate an addendum to this agreement to mitigate noise through additional soundproofing measures.

*Id.* at § 4(c).

## CONCLUSIONS OF LAW

22. The Board may approve an Application to Renew a Retailer's Class CT License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2016). Specifically, the question in this matter is whether usage of the roof will have a negative impact on the peace, order, and quiet of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2016).

23. Furthermore, “. . . the Board shall consider whether the proximity of [a tavern or nightclub] establishment to a residence district, as identified in the zoning regulations of the District and shown in the official atlases of the Zoning Commission for the District, would generate a substantial adverse impact on the residents of the District.” D.C. Official Code § 25-314(c).

### **I. The Unreasonable Noise Generated on the Roof Renders Touche Partially Inappropriate.**

24. The Board deems the Application partially inappropriate due to Touche's inability to control the disturbing noise emanating from the roof during late night hours and Touche's inability to comply with the current Settlement Agreements restricting the use of the roof.

25. Under the appropriateness test, “. . . the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located . . .” D.C. Official Code § 25-311(a). The Board is further required to rely on the probative and substantial evidence contained in the record. 23 DCMR § 1718.3 (West Supp. 2016).

26. In determining appropriateness, the Board must consider whether the applicant's future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances—not just whether the Application complies with the minimum requirements of the law. D.C. Council, Bill 6-504, the “District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986,” Committee on Consumer and Regulatory Affairs, 38 (Nov. 12, 1986); see *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 n. 12 (D.C. 2013) (“However, in mandating consideration of the effect on peace, order, and quiet, § 25-313(b)(2) does not limit the Board's consideration to the types of noises described in § 25-725.”). As part of its analysis, the Board should evaluate each “unique” location “according to the particular circumstances involved” and attempt to determine the “prospective” effect of the establishment on the neighborhood. *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Furthermore, the analysis may also include the Applicant's efforts to mitigate or alleviate operational concerns, the “character of the neighborhood,” the character of the establishment, and the license holder's future plans. *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 369 (D.C. 1982) (saying that the Board could rely on testimony related to the licensee's “past and future efforts” to control negative impacts of the operation); *Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 992 (D.C. 1985) (saying the Board may consider an applicant's

efforts to “alleviate” operational concerns); *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979); *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1196 (D.C. 1985); *Sophia's Inc. v. Alcoholic Beverage Control Bd.*, 268 A.2d 799, 800-801 (D.C. 1970).

27. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726.” D.C. Official Code § 25-313(b)(2); *see also* D.C. Official Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider “noise.” 23 DCMR § 400.1(a) (West Supp. 2016).

**a. Touche has failed to demonstrate the effectiveness or sufficiency of the soundproofing on the roof.**

28. The Protestants have persuaded the Board that Touche’s attempt to soundproof the roof is ineffective and insufficient. In considering appropriateness, the Board “may consider an applicant's efforts to address or alleviate operational concerns.” *In re Inner Circle 1223, LLC t/a Dirty Maritni Inn Bar/Dirty Bar*, Case No. 13-PRO-00172, Board Order No. 2014-507, ¶ 34 (D.C.A.B.C.B. Dec. 10, 2014). Specifically, “the Board may consider the establishment's soundproofing features and noise mitigation practices related to both amplified music and the human voice.” *Id.* In this case, Touche operates an unenclosed roof that lacks soundproofing features that prevent noise from escaping into the surrounding neighborhood and is located near many residents. *Supra*, at ¶¶ 5, 8, 10-12. Based on these facts, Touche failed to demonstrate that the soundproofing installed on the roof is sufficiently adequate to support the unrestricted use of the roof.

**b. Touche’s roof is generating an unreasonable amount of noise.**

29. The Board further finds that Touche’s operation of the roof as a dance and entertainment space creates an unreasonable and inappropriate amount of noise.

In interpreting [appropriateness test], the Board has explained that it may “. . . consider whether an establishment is generating little or no sound.” *In re Solomon Enterprises, LLC, t/a Climax Restaurant & Lounge*, Case No. 13-PRO-00152, Board Order No. 2014-474, ¶ 32 (D.C.A.B.C.B. Nov. 15, 2014) *citing In re 19th and K, Inc., t/a Ozio Martini & Cigar Lounge*, Case No. 13-PRO-00151, Board Order No. 2014-366, ¶ 37 (D.C.A.B.C.B. Oct. 1, 2014); *see also Panutat, LLC, v. District of Columbia Alcoholic Beverage Control Bd.*, 75 A.3d 269, 276-77 n. 12 (D.C. 2013). The Board further explained that the appropriateness test seeks to “. . . determine the appropriate amount of sound in light of the reasonable expectations of residents.” *Id.*; *see also* D.C. Council, Bill 6-504, the “District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986,” Committee on Consumer and Regulatory Affairs, 38 (Nov. 12, 1986).

. . . Previously, the Board has looked to the court’s decision in *T.L.* as a means of determining the reasonable expectations of residents. *Climax Restaurant & Lounge*, Board Order No. 2014-366 at ¶ 33; *see also Ozio Martini & Cigar Lounge*, Board Order No. 2014-366 at ¶ 6. There, the court found that the government has a substantial interest

in preventing noise from disturbing people in their homes. *In re T.L.*, 996 A.2d 805, 812 (D.C. 2010). Therefore, the government has the authority to prevent noise so unreasonably loud that it “. . . unreasonably intrude[s] on the privacy of a captive audience or so loud and continued as to offend[] a reasonable person of common sensibilities and disrupt[] the reasonable conduct of basic nighttime activities such as sleep.” *Id.* at 813 (quotation marks removed).

*In re Inner Circle 1223, LLC t/a Dirty Martini Inn Bar/Dirty Bar*, Case No. 13-PRO-00172, Board Order No. 2014-507, ¶¶ 29-30 (D.C.A.B.C.B. Dec. 10, 2014) (footnote removed)

30. In applying this standard, the Board has previously held that an establishment acts inappropriately when it generates amplified music that may be heard in residences located in another building. “For example, in *Ozio*, the Board determined that it was unreasonable for the licensee to have its amplified music emanate into a residence approximately 100 feet away from the establishment.” *Id.* at ¶ 31 citing *Ozio Martini & Cigar Lounge*, Board Order No. 2014-366 at ¶ 59. “Likewise, in *Climax*, the Board found that it was inappropriate for the licensee to have its amplified music emanate into an apartment located 700 feet away from the establishment.” *Id.* at *Climax Restaurant & Lounge*, Board Order No. 2014-366 at ¶ 35.

31. In this case, multiple residents living more than 100 feet from the establishment reported that they hear amplified sounds from Touche’s roof inside their homes. *Supra*, at ¶¶ 8, 10-11. Similar to *Ozio* and *Climax*, Touche’s rooftop operations are generating unreasonable and inappropriate amount of noise that must be curbed.

**c. The Noise Generated by Touche Violates the Terms of its Settlement Agreements.**

32. The record shows that Touche is not complying the terms of its Settlement Agreements.

33. Under § 25-315(b), during renewal, “The Board shall consider the licensee's record of compliance with . . . any conditions placed on the license during the period of licensure, including the terms of a settlement agreement.” D.C. Official Code § 25-315(a), (b)(1). The Board notes that when an establishment is governed by multiple settlement agreements with provisions that address the same topic, the strictest condition governs.

34. The combination of both Settlement Agreements solely allows the licensee to play pre-recorded music on the rooftop to support dining activities. *Supra*, at ¶¶ 19-20. It prohibits live entertainment, including disc jockeys, and amplification of the human voice, such as through a microphone. *Id.* By law a disc jockey is defined as anyone that plays prerecorded music and either makes “announcements or comments”; [m]anipulate[s] or mix[es] music”; “provide[s] live entertainment”; or “play[s] music from a disc jockey booth.” D.C. Official Code § 25-101(19A).

35. The agreements further indicate that the roof cannot be used for standing events, and should be used exclusively for dining and food service. *Supra*, at ¶ 20. There is also an expectation that the Applicant will manage sound coming from the roof so that it does not bother nearby residents. *Supra*, at ¶¶ 19-20.

36. Nevertheless, the record shows that Touche is not complying with the noise control provisions of its Settlement Agreements. First, the ANC demonstrated a violation of the prohibition on hosing live entertainment, which includes the use of disc jockeys, on the roof. *Supra*, at ¶¶ 16-18. Specifically, this finding is supported by the fact that the woman in the photograph is standing in a disc jockey booth, identifies herself as a disc jockey, and has mixing equipment, which renders her a disc jockey as a matter of law. *Supra*, at ¶ 16. Second, multiple residents reported hearing amplified sounds coming from the roof even though they live at least one hundred feet or more from the establishment. *Supra*, at ¶¶ 8, 10-11. This is a violation of the agreements, because the clear intent of the parties to these agreements was to prevent noise from disturbing nearby residents. And third, the ANC demonstrated a violation of the requirement to use the roof for only dining through the picture of a crowd standing on the roof and advertisements showing that the roof was used for parties. *Supra*, at ¶¶ 16-18.

37. The Board is aware that Touche has argued that it is not being treated similarly to other establishments. Regardless of whether this is actually the case, the specific adverse impacts caused by the operation of the roof and settlement agreement violations identified in this case merit the placement of additional restrictions on the roof.

38. For these reasons, the Board finds that renewal is inappropriate so long as disturbing noise coming from the roof continues unabated.

## II. The Board Imposes Conditions on the Roof to Resolve The Noise Issue.

39. In light of the Board's findings regarding appropriateness, the Board finds it necessary to impose conditions on the Applicant's license in order to justify the renewal of the license. *See In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Case No. 092040, Board Order No. 2014-512, ¶ 49 (D.C.A.B.C.B. Nov. 13, 2013) (saying "[i]n practice, the Board has imposed conditions when it is shown that there are valid concerns regarding appropriateness that may be fixed through the imposition of specific operational limits and requirements on the license").

40. Under § 25-104(e), the Board is granted the authority to impose conditions on a license when ". . . the inclusion of conditions will be in the best interest of the [neighborhood] . . ." D.C. Official Code § 25-104(e). The Board is also authorized to reduce the hours of sale and delivery of alcohol at an establishment under § 25-724. D.C. Official Code § 25-724.

41. In prior cases, the Board has restricted outdoor seating hours when faced with potential late night noise problems. For example, in *Romeo & Juliet*, the Board disapproved of full operational hours for an outdoor seating area, because the proposed tree enclosure was not sufficient to prevent the leakage of sound and the prior business generated noise that could be heard by nearby residents on their property. *In re 301 Romeo, LLC, t/a Romeo & Juliet*, Case No. 13-PRO-00136, Board Order No. 2014-045, ¶ 46 (D.C.A.B.C.B. Jan. 29, 2014). The Board then conditioned licensure on the sidewalk café not operating past 11:00 p.m., Sunday through Thursday, and midnight on Friday and Saturday. *Id.* at 11; *see also In re 1001 H Street, LLC, t/a Ben's Chili Bowl/Ben's Upstairs*, Case No. 13-PRO-00133, Board Order No. 2014-071 (D.C.A.B.C.B. Mar. 12, 2014) (imposing similar conditions on a restaurant applicant's sidewalk café and rooftop).

42. The Board conditions renewal on Touche ceasing usage of the roof at 11:00 p.m., Sunday through Thursday, and midnight on Friday, Saturday, and days designated as extended hours holidays in accordance with D.C. Official Code § 25-723(c). This condition balances the reasonable expectations of nearby residents for peace and quiet in their homes during traditional sleeping hours against the Touche's business need to use its rooftop.

43. The Board further prohibits the production of amplified sounds on the roof between 10:00 p.m. and 9:00 a.m. The Board imposes this condition because the settlement agreement specifically limits the use of the rooftop to dining and usage of the roof for food service after 10:00 p.m. is highly unlikely. *Supra*, at ¶¶ 16, 20. Moreover, the Board imposes this condition because the rooftop lacks any significant soundproofing features; therefore, this condition further prevents the creation of disturbing late night noise.

### **III. Except for the Issue of Noise, Touche is Deemed Appropriate Under § 25-311(a).**

44. In this case, the parties did not dispute the general appropriateness of the other portions of Touche's operations. Therefore, the Board deems the other aspects of Touche's operations—unrelated to rooftop noise—appropriate.

### **IV. The Board Satisfies the Great Weight Requirement.**

45. ANC 6A's written recommendation submitted in accordance with D.C. Official Code § 25-609(a) indicated that its protest was based on concerns regarding Touche's impact on peace, order, and quiet. *ANC 2B Protest Letter*, 1. The Board notes that it specifically addressed these concerns in the Board's Conclusions of Law, above.

### **V. The Application Satisfies All Remaining Requirements Provided by Title 25.**

46. 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 (West Supp. 2016). Accordingly, based on the Board's review of the Application and the record, the Applicant has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

## **ORDER**

Therefore, the Board, on this 1st day of June 2016, hereby **APPROVES** the Application to Renew a Retailer's Class CT License at premises 1123 H Street, N.E. filed by Naomi's Ladder, LLC, t/a Touche, under the **CONDITION** that it operates in accordance with the following:

1. The license holder's operational hours on the roof, including the ability to allow patrons on the roof, shall end at 11:00 p.m., Sunday through Thursday and midnight on Friday,

Saturday, and days designated as extended hours holidays in accordance with D.C. Official Code § 25-723(c); and

2. The license holder shall not permit or play amplified music or other amplified sounds, including background or pre-recorded music, on the roof between 10:00 p.m. and 9:00 a.m.

Touche is **ADVISED** that it has an obligation to ensure that it does not violate the terms of its Settlement Agreements while they are in effect. Touche is advised that Paragraphs 19 and 20 of this Order represent the Board's interpretation of those agreements.

**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.

The ABRA shall deliver a copy of this order to the Applicant and ANC 6A

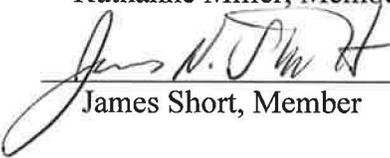
District of Columbia  
Alcoholic Beverage Control Board

  
\_\_\_\_\_  
Donovan Anderson, Chairperson

\_\_\_\_\_  
Nick Albertj, Member

  
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Mike Silverstein, Member

  
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Ruthanne Miller, Member

  
\_\_\_\_\_  
James Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 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).