

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

In the Matter of:)
)
Proust Partners Limited Company)
t/a Wunder Garten)
)
Applicant for a New)
Retailer's Class DT)
)
at premises)
150 M Street, N.E.)
Washington, D.C. 20002)
_____)

Case No. 15-PRO-00033
License No. ABRA-098173
Order No. 2015-275

Proust Partners Limited Company, t/a Wunder Garten (Applicant)

Tony Goodman, Commissioner, Advisory Neighborhood Commission (ANC) 6C

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

**ORDER ON SETTLEMENT AGREEMENT
AND WITHDRAWAL OF ANC 6C'S PROTEST**

The Application filed by Proust Partners Limited Company, t/a Wunder Garten, for a new Retailer's Class DT License, was protested; however, a Roll Call Hearing scheduled for May 26, 2015, was not held, because the Parties submitted a Settlement Agreement before the hearing.

The official records of the Board reflect that the Applicant and ANC 6C entered into a Settlement Agreement (Agreement), dated April 23, 2015, that governs the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Commissioner Tony Goodman, on behalf of ANC 6C, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 6C of this Application.

Accordingly, it is this 20th day of May, 2015, **ORDERED** that:

1. The Application filed by Proust Partners Limited Company, t/a Wunder Garten, for a new Retailer's Class DT License, located at 150 M Street, N.E., Washington, D.C., is **GRANTED**;
2. The Protest of ANC 6C in this matter is hereby **WITHDRAWN**;
3. The above-referenced Settlement Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications:

Section 1 (Nature of Business) – The following language shall be removed:
“...and with explicit permission by the ANC.”

Section 3 (Noise Suppression) – This Section shall be modified to read as follows:
“The establishment operation shall at all times be in compliance with the D.C. Noise Control Act and DC Code 25-725. Applicant acknowledges that Protestants are extremely concerned regarding the potential for noise emanating from this establishment. Applicant will encourage employees and patrons to be considerate of residents in the neighborhood by keeping conversations and other noises at a level that will not disturb the peace, order, quiet and tranquility of residents in the enjoyment of their homes and by departing the vicinity of the premises immediately upon exiting. Signs reminding employees and patrons to be considerate about noise levels will be placed at several locations on the premises and at the entrance/exit. All amplified noise and all music will cease by 10:00 p.m. Applicant will discourage patrons from loitering in the surrounding area after leaving the establishment.

Applicant agrees that in the event five separate residents within a two block radius deem noise (including, but not limited to, noise from speakers or other devices from amplification) to be excessive and file a written complaint or complaints to ABRA to that effect, the operating hours will be adjusted as follows:

- Monday - Tuesday: 4 PM to 10 PM
- Wednesday - Thursday: 4 PM to 10 PM
- Friday: 12 PM to 10 PM
- Saturday: 12 PM to 10 PM
- Sunday: 12 PM to 10 PM.”

Section 8 (Communication with Protestant) – This Section shall be removed.

Section 13 (Right to Seek Redress) – The second sentence shall be modified to read as follows: “The parties agree that if any complaint of violation of this Agreement is not so resolved, then any failure of the Applicant to adhere to the

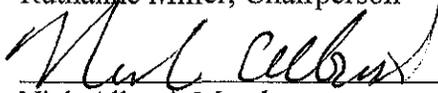
foregoing commitments will constitute a breach of this agreement and grounds for the Protestant to file a complaint with the ABC Board as provided by D.C. Official Code § 25-446(e) in order to enforce the provisions of the Agreement.”

The parties have agreed to these modifications.

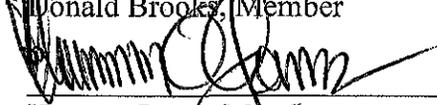
4. Copies of this Order shall be sent to the Applicant and ANC 6C.

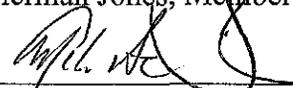
District of Columbia
Alcoholic Beverage Control Board

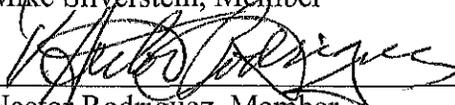

Ruthanne Miller, Chairperson

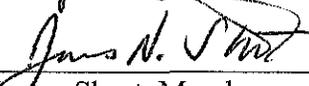

Nick Alberti, Member


Donald Brooks, Member


Herman Jones, Member


Mike Silverstein, Member


Hector Rodriguez, Member


James Short, Member

Pursuant to D.C. Official Code § 25-433, 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, 2000 14th Street, N.W., Suite 400S, Washington, DC 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 (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).

ANC 6C SETTLEMENT AGREEMENT FOR WUNDER GARTEN

THIS AGREEMENT is made and entered into as of this 23rd day of April by and between Proust Partners LLC, operating under the trade name "Wunder Garten" (hereinafter the "Applicant"), and Advisory Neighborhood Commission 6C, (hereinafter "Protestants").

WHEREAS, Applicant having filed an application with the District of Columbia Alcoholic Beverage Control Board (hereinafter "ABC Board") for issuance of a Retailer's Class D license for premises of 150 M Street, N.E., Washington, D.C.

WHEREAS, in recognition of the ABC Board's policy of encouraging parties to a protested proceeding to settle their differences by negotiating agreements, the parties hereto being desirous of entering into an agreement whereby, subject to approval of the ABC Board, Applicant will agree to adopt certain measures to address the Protestants' concerns and Protestants' will agree to the issuance of the ABC License and withdraws their Protests.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings memorialized herein, the parties agree as follows:

- 1. Nature of Business:** Applicant will operate at all times as a bona-fide Class D (as such term is defined in ABC statutes and regulations). Applicant will not make its premises available to non-employee promoters for presentation of advertised "parties" or "events" intended to generate profit for such promoters. At no time shall there be more than 300 patrons on the premises, unless for special events and with explicit permission by the ANC. The number of special events shall be limited to not more than one event every 4 weeks.
- 2. Hours of Operation:** Applicant's operating hours shall be

Monday - Tuesday: 4 PM to 10 PM
Wednesday - Thursday: 4 PM to 10 PM
Friday: 12 PM to 12 AM
Saturday: 12 PM to 12 AM
Sunday: 12 PM to 10 PM

It is understood that after cessation of said "operating hours," no patrons shall remain on the premises. Provided that: (a) on days designated by the DC ABC Board as "Extended Hours for ABC Establishments" applicant may operate for one additional hour (that is, one hour later in the evening); and (b) in the event the Council of the District of Columbia or the ABC Board grants licensees in general extended operating hours (such as for Inauguration) applicant may avail itself of such extended hours.

- 3. Noise Suppression:** The establishment operation shall at all times be in compliance with the D.C. Noise Control Act and DC Code 25-725. Applicant acknowledges that Protestants are extremely concerned regarding the potential for noise emanating from this establishment. Applicant will encourage employees and patrons to be considerate of residents in the neighborhood by keeping conversations and other noises at a level that will not disturb the peace,

order, quiet and tranquility of residents in the enjoyment of their homes and by departing the vicinity of the premises immediately upon exiting. Signs reminding employees and patrons to be considered about noise levels will be placed at several locations on the premises and at the entrance/exit. All amplified noise and all music will cease by 10:00 p.m. Applicant will discourage patrons from loitering in the surrounding area after leaving the establishment.

Applicant agrees that in the event three separate residents within a two block radius deem noise (including, but not limited to, noise from speakers or other devices from amplification) to be excessive and file a written complaint or complaints to ABRA to that effect, the applicant will have 48 hours to commence commercially practicable efforts to adjust its operations accordingly. If adjusted operations are not deemed adequate after review by the ANC, the operating hours will be adjusted as follows:

Monday - Tuesday: 4 PM to 10 PM
Wednesday - Thursday: 4 PM to 10 PM
Friday: 12 PM to 10 PM
Saturday: 12 PM to 10 PM
Sunday: 12 PM to 10 PM

If one month after the change of operating hours, the ANC deems applicant's conduct responsible and the operational adjustment successful, the adjusted operating hours revert back to the original operating hours.

4. **Parking:** The applicant shall provide bike racks and encourage the use of public transportation to minimize traffic and the demand for parking.
5. **Deliveries:** To maintain the peace, order and quiet of the surrounding neighborhood, Applicant shall receive all deliveries of food, beverages and supplies during hours between 9:00 am and 5:00 pm Mondays – Saturdays. No deliveries shall be accepted on Sundays.
6. **Trash Pick-Up and Removal:** Applicant will maintain regular trash/garbage removal service only during the hours from 9:00 am to 5:00 pm. The Applicant shall keep dumpster lids tightly closed and incapable of being entered by rodents, in order to limit odors and help control pest and rodent population. Applicant will contract for regular rodent and pest (insect) abatement. There shall be no outdoor disposal of glass bottles after 10:00 pm.
7. **Food Odors:** Applicants acknowledges that odors from food trucks are a concern of Protestants and Applicant will work with food truck vendors to minimize odors from their operations.
8. **Communication with Protestant.** Applicant agrees to meet, as reasonably requested (but not less than every 30 days if so requested), with the Protestants (or any of them) to address any perceived problems arising from the operation of the business. The Applicant agrees to work in good faith with the Protestants to resolve any such problems.

9. **Toilet facilities.** Applicant will contract to provide adequate toilet facilities on premises. Portable toilets will be serviced and cleaned as necessary, and not less than once per week.
10. **Property maintenance and appearance.** Applicant agrees to keep property, improvements and fences clean and in good repair. Applicant will keep adjoining spaces that are accessible to Applicant free of weeds, cigarette butts, and trash. Applicant will provide trash receptacles throughout the premises and at the entrance/exit. Through signs and with the help of employees, Applicant will encourage guests to appropriately dispose of trash and to recycle.
11. **Security.** The Applicant agrees to provide adequate security to control crowds onsite and at the entrance to the establishment at all times, with the goal of keeping the premises and its surrounding areas safe and inviting.
12. **Withdrawal of Protest.** Protestants agree to the issuance of the license and the withdrawal of their protests upon execution of this Agreement, provided that this Voluntary Agreement is incorporated into the Board's order issuing, amending or renewing the license, which order is thereby conditioned upon compliance with such Voluntary Agreement.
13. **Right to Seek Redress:** The parties agree that Applicant will be given written notice of any alleged violation of this Agreement and will be afforded ten (10) days in which to investigate and respond to any complaint. The parties agree that if any complaint of violation of this Agreement is not so resolved, then any failure of the Applicant to adhere to the foregoing commitments will constitute a breach of this agreement and grounds for the Protestant to petition the Board for issuance of an order to Show Cause, as provided by D.C. Code 25-446(e).

IN WITNESS WHEREOF, the Parties place their signatures to this agreement, this 24th day of April 2015.

APPLICANT


By:
Christopher Lynch
Proust Partners LLC

ADVISORY NEIGHBORHOOD COMMISSION 6C


By:
Tony Goodman, ANC 6C06