

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

In the Matter of:)

E and K, Inc.)
t/a Champion Kitchen)

Application to Renew a)
Retailer's Class CR License)

at premises)
7730 Georgia Avenue, N.W.)
Washington, D.C. 20012)

Case No.: 19-PRO-00051
License No: ABRA-103055
Order No: 2019-922

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member
Rafi Aliya Crockett, Member

ALSO PRESENT: E and K, Inc., t/a Champion Kitchen, Applicant

Sidon Yohannes and Andrew Kline, Counsels, on behalf of the Applicant

Naima Jefferson, Designated Representative, Shepard Park Citizens
Association, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) approves the Application to Renew a Retailer's Class CR License filed by E and K, Inc., t/a Champion Kitchen, (hereinafter "Applicant" or "CK"). CK is advised that it is obligated to comply with the terms and conditions of its settlement agreement, including any limits on occupancy and seats. The Applicant is warned that further violations of the agreement may put the license holder at risk of being deemed an intentional and willful violator of the law; therefore, it is critical that CK come into

compliance immediately. CK is further ordered to cease allowing or permitting the smoking of tobacco and hookah inside the premises until it provides the Board with a copy of the appropriate licenses and permits from the D.C. Department of Health.

Procedural Background

The Notice of Public Hearing advertising CK's Application was posted on April 12, 2019, and informed the public that objections to the Application could be filed on or before May 28, 2019. *ABRA Protest File No. 19-PRO-00051*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that the Shepard Park Citizens Association (SPCA) has filed a protest against the Application. *ABRA Protest File No. 19-PRO-00051*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on June 10, 2019, where the above-mentioned objector was granted standing to protest the Application. On August 14, 2019, the parties came before the Board for a Protest Status Hearing. The Protest Hearing in this matter occurred on October 2, 2019. After the hearing, the parties filed Proposed Findings of Fact and Conclusions of Law, which were considered by the Board.

The Board recognizes that an Advisory Neighborhood Commission's (ANC) properly adopted written recommendations are entitled to great weight from the Board. D.C. Code §§ 1-309.10(d), 25-609; *Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982). The Board notes that it did not receive a recommendation from any ANCs.

Based on the issues raised by the Protestant, the Board may only grant the Application if the request will not have an adverse impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2019).

Preliminary Matters

At the outset of the hearing, the SPCA moved to dismiss the Application. *Transcript (Tr.)*, October 2, 2019 at 11. The basis of the SPCA's motion is their claim that the Applicant falsely reported the occupancy as 44 persons in the renewal application when the occupancy of the premises is 89 persons. *Id.* The SPCA further averred that after getting approval for an occupancy of 44 persons, the Applicant, in 2017, applied for a greater occupancy with DCRA. *Id.* In response, in June 2017, DCRA issued a new certificate of occupancy (COO) allowing for an occupancy of 89 persons. *Id.* The Board denies the motion to dismiss, because the Applicant is entitled to request a lesser occupancy on their liquor license application, even if the COO lists a higher number or is later changed. For these reasons, and those additional reasons stated during the hearing, the motion is denied. *Id.* at 20-23.

The SPCA further moved to strike and exclude the evidence provided by the Applicant based on errors in the Applicant's protest information form, which provided an incorrect licensee

name and license number, and left out some of the protest issues. *Id.* at 24-25, 29-30. Nevertheless, the Applicant otherwise complied with the Board's evidentiary submission requirements and any errors in the form are *de minimis*, and do not prejudice the SPCA's ability to put on its case. *Id.* at 29. Therefore, at the hearing, the Board denied the request to totally exclude the Applicant's evidence from the record, but still permitted the SPCA to make individual objections to evidence on a case-by-case basis as the hearing proceeded. *Id.* at 31.

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. CK has submitted an Application to Renew a Retailer's Class CR License at 7730 Georgia Avenue, N.W. Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Jovan Miller investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 19-PRO-00051, Protest Report* (Sept. 2019) [*Protest Report*].
3. The proposed establishment is located in a MU-4 zone. *Protest Report*, at 3. Five licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 4. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 6.
4. According to the public notice, CK's proposed hours of operation and entertainment begin at 10:00 a.m. and end at 2:00 a.m. Sunday through Thursday, and end at 3:00 a.m. on Friday and Saturday. *Id.* at 7. In regards to hours of sale, service, and consumption of alcohol, the establishment's hours begin at 12:00 p.m. and end at 1:00 a.m. Sunday through Thursday, and end at 2:00 a.m. on Friday and Saturday. *Id.*
5. ABRA investigators monitored the establishment on 17 occasions between August 17, 2019, and September 24, 2019. *Id.* at 9. During that time, investigators did not observe issues regarding peace, order, and quiet, trash, or criminal activity. *Id.* A review of police records indicate that between January 1, 2018, and July 31, 2019, the police only received four calls for service at CK's address. *Id.* at 10. ABRA's records show no noise complaints were made against CK. *Id.*
6. ABRA's records show that CK committed multiple violations between 2017 and the present. *Id.* at 11. In 2017, CK was fined for failing to maintain required books and records, while in 2018, CK received a warning and a fine for failing to file two quarterly reports. *Id.* In 2018, CK was also fined for illegally increasing its occupancy and received a warning for failing to follow its settlement agreement. *Id.* In order to resolve these violations, CK was required to

file and comply with a security plan. *Id.* Finally, in 2019, CK received fines for failing to have a licensed manager present and filing a required quarterly report. *Id.*

7. Thirteen bus stops may be found near CK. *Id.* at 9. Street parking is available on various streets near the establishment. *Id.* at 9-10.

8. CK has hired DG Trash to conduct trash removal “approximately three times per week.” *Tr.*, 10/2/19 at 54.

9. The establishment has a maximum occupancy of 89 persons, but the establishment’s settlement agreement limits the capacity to 44 persons. *Id.*; *Transcript (Tr.)*, October 2, 2019 at 57. The Applicant admitted that it is limited to 44 seats under the terms of its license. *Id.* at 19. Nevertheless, Investigator Miller observed 87 seats at the establishment during his visits. *Id.* at 66. The investigator noted that the owner did not remove the extra seats after advising the owner of the violation. *Id.* at 67, 69. The investigator further noted that he never observed a violation of the establishment’s occupancy. *Id.* at 70.

10. Investigator Miller is aware that CK recently received notice of smoking and tobacco violations at the establishment from the D.C. Department of Health. *Id.* at 82-83.

II. Annette Young

11. Annette Young works in the neighborhood between 8:00 a.m. and 8:00 p.m. during the week. *Id.* at 92-93. She is not aware of the establishment having any negative impact on the community. *Id.* at 94.

III. David Andrews

12. David Andrews owns Prestige Event Management, which provides security to CK. *Id.* at 97. He has provided security services to CK since 2018. *Id.* As part of his services, he provides security personnel. *Id.* This usually means that his company will provide between two to three security for the establishment depending on the crowd. *Id.* at 97-98. Security services are provided seven days per week. *Id.* at 99. When assigned to the establishment, security will check identifications, search bags, and perform pat downs. *Id.* at 98. Security also walks the perimeter at the end of the night to discourage loitering. *Id.* at 100. He also is aware that the establishment has reimbursable detail officers during the weekend. *Id.*

13. Mr. Andrews described his observations of the establishment. *Id.* at 100. He has never observed music emanating from the establishment. *Id.* at 100-01. He has observed costumers smoke hookah pipes. *Id.* at 108.

IV. Eyob Worku

14. Eyob Worku owns CK. *Id.* at 114-15. CK operates as an American-Ethiopian restaurant and has been in business for about two and half years. *Id.* at 115, 117. The establishment’s kitchen is usually open until at least a half hour before closing, and sometimes even operates

until closing. *Id.* at 116. The establishment generally stops serving alcohol approximately one hour before closing. *Id.* at 118. The establishment also offers disc jockey entertainment. *Id.* at 123. The establishment has 12 parking spaces dedicated to the establishment. *Id.* at 129.

15. Mr. Worku took various steps to soundproof the establishment in 2017 after receiving a noise complaint from a nearby resident. *Id.* at 125-26. In order to resolve the noise issue, he installed soundproof panels and equipment that allowed him to control the volume of music at the establishment. *Id.* He has not received any noise complaints since he installed the soundproofing. *Id.* at 128.

16. Mr. Worku has also taken other steps to avoid negatively impacting the community. *Id.* at 132. First, CK posted no loitering signs and a sign reminding patrons to be quiet when they leave. *Applicant's Exhibit No. 13*. Second, the establishment uses two reimbursable detail officers every Friday and Saturday until 3:00 a.m. *Tr.*, 10/2/19 at 134.

17. As of the day of the hearing, Mr. Worku indicated that he still had 87 seats inside the premises. *Id.* at 160.

V. Thurman Baker

18. Thurman Baker lives about ten blocks away from the establishment. *Id.* at 169. As a regular customer, he has not observed any criminal or rowdy behavior. *Id.* at 171. He also has not observed any issues regarding sound. *Id.* at 172.

VI. Carl Bergman

19. Carl Bergman serves on the Board of the SPCA. *Id.* at 197. Based on his observations, CK is located on a commercial street while the majority of the residents surrounding the commercial street live in single family homes. *Id.* at 198. As a representative of the SPCA, he has heard numerous complaints from his constituents but admitted that he did not have “direct knowledge.” *Id.* at 212, 216.

20. Mr. Bergman discussed the establishment’s compliance with the settlement agreement. *Id.* at 202. First, the establishment is not supposed to promote itself as a “bar,” but he observed that CK’s website identifies the establishment as a bar. *Id.* at 203. Second, he believes the establishment is in violation of the District’s tobacco laws and the settlement agreement by offering hookah. *Id.* at 209-10.

VII. Paula Edwards

21. Paula Edwards is a resident of the community. *Id.* at 218. She described the community as highly residential with many single family homes. *Id.* at 219. When she has visited the area around the club after midnight she has observed a few people standing outside talking. *Id.* at 222. She admitted that these persons were not talking “terribly loudly.” *Id.* She has also heard others complain about the establishment. *Id.* at 222-23. Ms. Edwards reviewed the

establishment's quarterly reports and believes the levels of food and alcohol sales are inconsistent. *Id.* at 225-26.

VIII. Naima Jefferson

22. Naima Jefferson serves as the President of the SPCA. *Id.* at 246. First, she has observed litter in the vicinity of the establishment. *Id.* at 247-48. Second, she complained that CK was illegally using a flashing neon sign in violation of District law and the community's settlement agreement. *Id.* at 255-56.

23. Ms. Jefferson lives in one of the closest residences to the establishment. *Id.* at 259. Based on her experience as a resident, she has seen many drunk people around the establishment. *Id.* She was also woken up on one night by rowdy people standing in front of her house. *Id.* She also has observed other intoxicated persons in the vicinity talking loudly and smoking. *Id.* at 262.

24. Ms. Jefferson believes that some buyers are discouraged from purchasing residences in the neighborhood because of the presence of CK. *Id.* at 270.

IX. Eyob Worku (Rebuttal Witness)

25. In response to Ms. Jefferson's complaint regarding the flashing sign, Mr. Worku indicated that has turned off the sign's light and has not used it since receiving a notice to cure. *Id.* at 293-94, 296.

CONCLUSIONS OF LAW

26. The Board may approve an Application to Renew a Retailer's Class CR License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2019). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2019).

I. The Establishment is Appropriate for the Neighborhood.

27. 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. Code § 25-311(a). The Board shall only rely on "reliable" and "probative evidence" and base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2019). The substantial evidence standard requires the Board to rely on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) citing *Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

28. 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).

a. CK is not having a significant impact on the neighborhood's peace, order, and quiet.

29. “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. Code § 25-313(b)(2); *see also* D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider “noise, rowdiness, loitering, litter, and criminal activity.” 23 DCMR § 400.1(a) (West Supp. 2019).

30. In this case, it has not been shown that CK is having any sort of continuous or ongoing negative impact on the peace, order, and quiet of the community. CK has taken several significant steps to reduce its impact on the community, such as regularly using reimbursable detail units, hiring private security, and installing soundproofing. *Supra*, at ¶¶ 12, 15-16. Furthermore, evidence of intoxicated persons, litter, and loitering in the community has not been satisfactorily tied to the establishment, appear isolated, and have not been shown to have a significant or continuous impact on the community. *Supra*, at ¶¶ 19, 21, 23. Finally, to the extent the establishment has committed or is committing violations of the city's alcohol laws and other portions of law, the Board is not convinced that they are so severe or repetitive that it is necessary to depart from ABRA's regular enforcement process at this time. *Supra*, at ¶¶ 20, 22, 25. Therefore, the Board finds in favor of CK on this ground.

b. CK is not having a negative impact on residential parking needs and vehicular and pedestrian safety.

31. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety” D.C. Code § 25-313(b)(3); *see also* D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider the availability of both private and public parking, any parking arrangements made by the establishment, whether “[t]he flow of traffic . . . will be of such pattern and volume as to . . . increase the [reasonable] likelihood of vehicular [or pedestrian] accidents” 23 DCMR § 400.1(b), (c) (West Supp. 2019). In this case, the establishment has at least 12 parking spaces dedicated to the establishment. *Supra*, at ¶ 14. Furthermore, the SPCA has not shown that the community is suffering from a deficit of residential parking or that traffic related to CK poses a danger to vehicles and pedestrians. Therefore, the Board finds in favor of CK on this ground.

c. CK is not having a negative impact on real property values.

32. In determining whether an establishment is appropriate, the Board must examine whether the establishment is having a negative effect on real property values. D.C. Code § 25-313(b)(1). The Board has noted in the past that the presence of blight may have a negative impact on property values. *In re Historic Restaurants, Inc., t/a Washington Firehouse Restaurant, Washington Smokehouse*, Case No. 13-PRO-0031, Board Order No. 2014-107, ¶ 48 (D.C.A.B.C.B. Apr. 2, 2014) *citing In re Rail Station Lounge, LLC, t/a Rail Station Lounge*, Case No. 10-PRO-00153, Board Order No. 2011-216, ¶ 62 (D.C.A.B.C.B. Jun. 15, 2011). In this case, there is no evidence that CK is creating blight. Furthermore, the SPCA has not presented any compelling evidence that property values in the community have actually fallen, and that such a fall in value has been caused by CK. *Supra*, at ¶ 24. Moreover, the evidence provided by the SPCA related to property values is purely speculative at this juncture. *Id.* Therefore, the Board finds in favor of CK on this ground.

II. The Establishment’s Record of Compliance Merits Renewal.

33. Under § 25-315, “[t]he Board shall consider 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. Code § 25-315(b)(1). While the record shows various violations of the law and issues with compliance with the settlement agreement, the Board is not persuaded that denial of the Application is warranted at this time. The Board is further satisfied that ABRA’s existing enforcement process is sufficient to address any existing legal violations committed by CK.

III. The Board Imposes Conditions on the License.

34. In light of evidence that Respondent is permitting the illegal use of tobacco on the premises, the Board finds it necessary to impose relevant conditions on the Applicant’s license to prevent additional illegal activity. *Supra*, at ¶ 13; D.C. Code § 7-741.03; *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”). 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. Code § 25-104(e). Based on this authority, CK will not be permitted to allow the use of tobacco inside the premises until it shows the Board that it has obtained the appropriate licenses and permits to do so.

IV. The Application Satisfies All Remaining Requirements Imposed by Title 25.

35. 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. 2019). 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 11th day of December 2019, hereby **APPROVES** the Application to Renew a Retailer's Class CR License filed by CK with the following **CONDITION**:

1. The establishment shall cease allowing or permitting individuals from smoking tobacco or hookah inside until it obtains and submits copies of the appropriate licenses and permits from the D.C. Department of Health allowing for the use of tobacco on the premises to the Board.

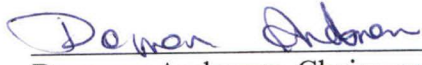
IT IS FURTHER ORDERED that the Protestant’s motion to dismiss is denied.

The Applicant is further **ADVISED** to comply with the terms of its settlement agreement, including any occupancy and seat conditions contained in the agreement. The Applicant is warned that further violations may put the license holder at risk of being deemed an intentional and willful violator of the law.

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.

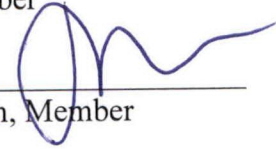
The ABRA shall deliver a copy of this order to the Parties.

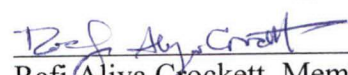
District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


James Short, Member

Bobby Cato, Member


Rema Wahabzadah, Member


Rafi Aliya Crockett, 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. 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. 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).