

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

In the Matter of:)

Hopeful, Inc.)

t/a To Be Determined)

Holder of a)

Retailer's Class CR License)

at premises)

2006 18th Street, N.W.)

Washington, D.C. 20009)

License Number: 91955

Order Number: 2018-654

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Donald Isaac, Sr., Member
Bobby Cato, Member
Rema Wahabzadah, Member

NOTICE OF SAFEKEEPING HEARING AND PROPOSED ORDER

On this 31st day of October 2018, Hopeful, Inc., t/a To Be Determined, (Licensee) is hereby directed to appear before the Alcoholic Beverage Control Board (Board), located at the Reeves Center, 2000 14th Street, N.W., Suite 400, Washington, D.C., on November 8, 2018, at 2:00 p.m. to demonstrate whether its license qualifies for an additional period of safekeeping or should be deemed abandoned and cancelled pursuant to D.C. Official Code § 25-791 for the reasons stated below.

The safekeeping hearing shall be held as a contested case pursuant to 23 DCMR § 1600.3(e). The hearing shall rely on the procedures provided by the D.C. Administrative Procedure Act (D.C. APA) (D.C. Official Code § 2-501 *et seq.*) and the hearing procedures provided by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations (Title 23).

All pleadings, or any other written communication, addressed to the Board, should be delivered to Martha Jenkins, General Counsel, 2000 14th Street, N.W., Suite 400, Washington, D.C. You should contact General Counsel Martha Jenkins at (202) 442-4456 upon receipt of this notice to discuss any potential settlement, consent order, or stipulation that you want the Board to consider in accordance with D.C. Official Code § 2-509(a).

All documents referenced in this notice are incorporated by reference, and also form the basis of the counts described below. Please find the relevant materials on ABRA's website or contact ABRA's Public Information Office if you seek to obtain copies of any document. Please also note that the Board has the right to obtain additional information regarding the application(s) under 23 DCMR § 500.3.

Under D.C. Official Code § 2-509(b), the Licensee may personally appear at the hearing, and may be represented by legal counsel. At the scheduled hearing, the Licensee has the right to produce witnesses and evidence on his or her behalf and to cross-examine witnesses. The Licensee may also examine evidence produced and have subpoenas issued on his or her behalf to require the production of witnesses and evidence.

The Board reserves the right to amend this notice in accordance with D.C. Official Code § 2-509 based on new information that is discovered during the hearing process. The Board also reserves the right to schedule additional hearings to address preliminary motions or additional information received by the Board during the hearing process.

All hearings are conducted before the Board in the English language. If a party or witness is deaf, or because of a hearing impediment cannot readily understand or communicate the spoken English language, the party or witness may apply to the Board for the appointment of a qualified interpreter. Please note that under § 2-509, the Licensee's failure to appear at the time and place set for the hearing, either in person or through counsel, or both, will not preclude the Board from proceeding in this matter, entering a default judgment, or cancelling your license

Based on information previously obtained by the Board, the Board proposes **CANCELLING** the license based on the following proposed order:

PROPOSED FINDINGS OF FACT

1. The Board issued ABRA License No. 91955, a Retailer's Class CR License, to Hopeful, Inc., t/a To Be Determined, which was issued to 2006 18th Street, N.W. *ABRA Licensing File No. 91955*. The Board approved the transfer of ABRA License No. 91955 to the Licensee on April 22, 2013 and placed the license in safekeeping until September 30, 2014. *Letter from April R. Randall, Assistant General Counsel, ABRA, to Lisa Drazin at ¶¶ 1-2.* (Aug. 15, 2017).
2. On May 1, 2014, the Board held a fact finding hearing to determine the safekeeping status of the Licensee. At that time, the Licensee informed the Board that she "bought the license to be leased with the property [at] . . . 1815 Columbia Road." *Transcript (Tr.)*, May 1, 2014, 2 (ABRA License No. 91955). The Licensee further indicated that she was "in the process of leasing the site" and that prospective tenants were touring the site. *Id.* at 3, 6. She then indicated that she expected to lease the property within a year. *Id.* at 11. At this time, the Licensee had no intent to use the license herself and could not identify a prospective transferee that would use the license. *Id.* at 18-27.
3. At a fact finding on October 7, 2015, the Licensee indicated that she was still searching for "an appropriate food and beverage tenant who will make use of the license." *Tr.*, October 7, 2015 (ABRA License No. 91955); *see also Safekeeping Denial*, at ¶ 4.

4. At an additional fact finding hearing on September 27, 2017, the Licensee indicated that she is planning to demolish and rebuild the property located at 1815 Columbia Rd., N.W. *Tr.*, September 27, 2017, at 18. During the hearing, she also presented various documents highlighting her efforts to build at 1815 Columbia Rd., N.W., and various delays associated with her project. *Id.* at 19.

5. The Licensee indicated that she is “currently in negotiations with a tenant.” *Id.* at 23. The Licensee could not provide a firm time frame as to when the license would be removed from safekeeping. *Id.* at 1-48. Finally, ABRA has no records demonstrating that as of the date of this notice the license is in use, has been removed from safekeeping for the purpose of resuming business, or a transfer application has been filed.

PROPOSED CONCLUSIONS OF LAW

6. The safekeeping law found in Title 25 of the D.C. Official Code makes all liquor licenses issued by the Board subject to a “Use It or Lose It” policy. This policy is created by § 25-791(a), which states

A license which is discontinued for any reason shall be surrendered by the licensee to the Board for safekeeping. The Board shall hold the license until the licensee resumes business at the licensed establishment or the license is transferred to a new owner. If the licensee has not initiated proceedings to resume operations or transfer the license within 60 days after suspension, the Board may deem this license abandoned after giving notice to the licensee.

D.C. Code § 25-791. Under § 25-791(b), “The Board may extend the period of safekeeping beyond 60 days for reasonable cause, such as fire, flood, other natural disaster; rebuilding or reconstruction; or to complete the sale of the establishment.” D.C. Code § 25-791(b); *see also* 23 DCMR § 704.2 (West Supp. 2017) (“An initial safekeeping period granted by the Board may be extended for reasonable cause as set forth in D.C. Official Code § 25-791(b).”). Under § 25-791(c), “Licenses in safekeeping beyond 60 days, as extended by the Board, shall be reviewed by the Board every 6 months to ensure that the licensee is making reasonable progress on returning to operation.” D.C. Code § 25-791(c). Finally, under § 25-791(e), “If a licensee notifies the Board that the licensee has ceased to do business under the license . . . the license shall be marked as ‘canceled.’” D.C. Code § 25-791(e).

7. The Board denies the Licensee’s request to further extend the time for safekeeping because the Licensee has failed to demonstrate reasonable cause or reasonable progress on returning to operation to merit extension of the licensee’s safekeeping in accordance with the safekeeping law.

8. When a license is kept in safekeeping, the licensee is obligated by § 25-791(a) to “initiate[] proceedings to resume operations or transfer the license” at the licensed location. § 25-791(a). In this case, the Licensee has no intent to resume operations at 2006 18th Street, N.W., and has not initiated the transfer of the license to a new owner in the approximately four years that the license has been held in safekeeping. *Supra*, at ¶ 1.

9. Nevertheless, the law allows a licensee to delay the application of § 25-791(a) for “reasonable cause.” § 25-791. Yet, in this case, there is no evidence that a fire, flood, or other natural disaster is preventing the Licensee from resuming business or transferring the license. Further, the Licensee has no intent to rebuild or reconstruct 2006 18th Street, N.W., the current location of ABRA License No. 91955. *Supra*, at ¶¶ 1-2. Moreover, the Board interprets the “rebuilding” or “reconstruction” language of § 25-791(b) as only referring to the property where the license is currently located. § 25-791(b). Construction or permitting delays at a separate premises, as is the case here, are not a valid reason for granting an extension; especially, when the license is free to be transferred to another location in the District. *Id.*, *supra*, at ¶ 5. Additionally, in the time the license has been in safekeeping, the Licensee has not identified a transferee, filed an application to transfer the license to a new owner or location, or even indicated with sufficient certainty that an application is forthcoming in the near future, which the Board finds necessary under the “complete the sale” grounds provided by § 25-791(b). *Supra*, at ¶¶ 2-3, 6. As a result, the Board cannot make a finding of reasonable cause or reasonable progress to merit an extension of safekeeping and must deem the license abandoned.

10. Additionally, upon receiving the license, the Licensee has never undertaken to use the license herself, to operate a business at the licensed address, or otherwise expressed any intent to operate a business under the license. *Supra*, at ¶ 2. Under these circumstances, the license further merits cancellation pursuant to § 25-791(e).

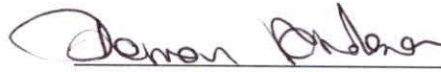
11. Finally, the Board is also not persuaded by the Licensee’s contention that she should be allowed to maintain the license based on a concern that the Board could create a new moratorium on restaurant licenses in Adams Morgan sometime in the future. *Tr.*, 9/27/17 at 7. The safekeeping law does not recognize hedging against future changes to the law or maintaining the license as an investment device as valid reasons for maintaining an inactive license.

12. For these reasons, the Board deems the license abandoned and orders the cancellation of the license pursuant to § 25-791.

PROPOSED ORDER

Therefore, the Board hereby **DENIES** the application for an extension filed by the Licensee. ABRA shall **CANCEL** ABRA License No. 91955 in accordance with D.C. Official Code §§ 25-791(a) and 25-791(e). A copy of this Order shall be delivered to the Licensee.

District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson


Nick Alberti, Member



Mike Silverstein, Member



James Short, Member



Donald Isaac, Sr., Member



Bobby Cato, Member

Rema Wahabzadah, Member

Pursuant to 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, 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. 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).