

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

**In the Matter of:**

Hopeful, Inc.  
t/a To Be Determined

)  
)  
) License Number: 91955  
) Order Number: 2019-076  
)  
)

Holder of a  
Retailer's Class CR License  
at premises  
2006 18th Street, N.W.  
Washington, D.C. 20009

**BEFORE:** Donovan Anderson, Chairperson  
Nick Alberti, Member  
Mike Silverstein, Member  
James Short, Member  
Bobby Cato, Member  
Rema Wahabzadah, Member

**ALSO PRESENT:** Hopeful, Inc., t/a To Be Determined, Licensee  
  
Lisa Drazin, License Holder, on behalf of the Licensee  
  
Michelle Belle, Counsel, on behalf of the Licensee  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

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The Alcoholic Beverage Control Board denies the safekeeping application filed by Hopeful, Inc., t/a To Be Determined, (Licensee) because it no longer qualifies for safekeeping. The Board further cancels the license pursuant to D.C. Official Code § 25-791.

***Procedural Background***

In a notice and proposed order issued on October 31, 2018, the Board proposed denying the application filed by the Licensee to maintain its license in safekeeping and cancelling the license pursuant to § 25-791. *In re Hopeful, Inc., t/a To Be Determined*, License No. 91955, Board Order No. 2018, 654, 1 (D.C.A.B.C.B. Oct. 31, 2018).

In adjudicating the matter, the Board directed that the matter be treated as a contested case and held a hearing on the application on January 9, 2019, in compliance with 23 DCMR § 1600.3(e). Additionally, the hearing relied on the procedures required by the D.C. Administrative Procedure Act (D.C. APA) (D.C. Official Code § 2-501 *et seq.*), Title 25 of the D.C. Official Code, and Title 23 of the D.C. Municipal Regulations (Title 23).

After the safekeeping hearing on January 9, 2019, the Board permitted the Licensee to submit additional documents, which were also considered as part of the Board's final decision in this matter.

### FINDINGS OF FACT

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

1. The Licensee has been issued ABRA License No. 91955, a Retailer's Class CR License, for 2006 18th Street, N.W. *ABRA Licensing File No. 91955*. Initially, the Board approved the transfer of the ownership 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). The Board notes that the license is still attached to 2006 18th Street, N.W., and has not been approved for a new location as of the date of this Order. *Transcript (Tr.)*, January 9, 2019 at 5-6.
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 hearing on October 7, 2015, the Licensee indicated that she was still searching for a tenant to utilize the license. *Tr.*, October 7, 2015 (ABRA License No. 91955).
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 discussed various delays associated with her project. *Id.* at 19.
5. At the same hearing, 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.

6. At the hearing held on January 9, 2019, Lisa Drazin, the manager of the trust that owns the property at 1815 Columbia Road, N.W., indicated that she had obtained multiple building permits for 1815 Columbia Road, N.W. *Tr.*, 1/9/2019 at 27, 40, 99-100. As of the date of the hearing, she expects to be issued permits or have agency permit under review related to energy, the bay window, and storm water and soil erosion of the property. *Id.* She expects to have all the permits she needs to obtain a construction loan, hire a general contractor, and commence demolition and construction within three months. *Id.* at 29-30.

7. Ms. Drazin indicated that she has previously hired four separate architects to assist with the project at 1815 Columbia Road, N.W., and each one had a long period of time before they could commence work. *Id.* at 30.

8. Ms. Drazin did not indicate that she had a specific tenant ready to take over the property or the license. *Id.* at 30-31. She indicated that an entertainment firm has expressed interest in the property, and she has a list of 500 perspective food and beverage tenants. *Id.* a 31. She indicated that the entertainment firm will not go forward until she obtains the required permits. *Id.*

9. ABRA has no records demonstrating that as of the date of this Order the license is in use, has been removed from safekeeping for the purpose of resuming business, or that a transfer application for a new location or new ownership has been filed. Ms. Drazin also was unable to provide a specific date in the future when she expects to be issued a Certificate of Occupancy. *Id.* at 36.

10. Ms. Drazin acknowledged that in October 2018, she was informed by the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) that approval from the HPRB had not been obtained and that new drawings had to be submitted. *Id.* at 39. Nevertheless, Ms. Drazin admitted that, as of January 9, 2019, the drawings requested by DCRA had not been submitted to the agency. *Id.* at 43. She further admitted that, as of the date of the hearing, the HPRB, had not issued any approvals related to her project. *Id.* at 44-45. She further admitted that the property's demolition permit has expired and that she needs to apply for new ones. *Id.* at 52.

11. Ms. Drazin discussed the history of the property located at 1815 Columbia Road, N.W. *Id.* at 45. Her family purchased the property around 1987. *Id.* at 45-46. A liquor store operated on the premises until 2005. *Id.* at 46. After 2005, a shoe store operated on the property until 2011. *Id.* at 46-47. Since 2011, the property has been vacant. *Id.* at 47. She further indicated that since the last tenant vacated the premises, the roof has leaked and the building has low pressure water and gas. *Id.* In 2005, Ms. Drazin began attempting to get the property's gas line fixed; however, as of the date of the hearing, the problem with the gas had still not been addressed. *Id.* at 49.

12. John Sage is the principal owner of Alter Urban Architecture and works as an architect. *Id.* at 65. He was hired by the Licensee to revise the Licensee's current permit applications and acquire building permits. *Id.* at 63-64. Nevertheless, after the hearing the Licensee presented an architecture services contract with E & G Consulting, LLC, a separate firm, dated and signed by the Licensee on January 22, 2019. *E & G Consulting, LLC Contract*, at 1, 5.

13. Presently, a permit application is pending review for the construction of a six story building at 1815 Columbia Road, N.W. *Id.* at 65-66. The permit still requires approval of a number of trades, including energy, mechanical, and plumbing. *Id.* at 66. Mr. Sage indicated that he could submit the required materials for the permit within approximately 60 days. *Id.* at 66-67. He further indicated that once the permits are issued, a contractor could complete the construction of the building in about 12 to 18 months. *Id.* at 68.

14. Mr. Sage indicated that as of the date of the hearing he has not entered into a written contract with the Licensee to provide his services. *Id.* at 79, 92. He further indicated that no bids on the construction project have been submitted. *Id.* at 80-81.

15. Mr. Sage admitted that the property was located in a historic district and requires approval from the HPRB. *Id.* at 84-85. He further admitted DCRA would not issue any permits until HPRB approval is provided. *Id.* at 87. Nevertheless, Mr. Sage indicated that his services do not include providing documentation to the HPRB. *Id.* at 87-88.

16. The records of the HPRB indicate that it reviewed the Licensee's proposal for new construction on October 27, 2016, which is located in the "Kalorama Triangle Historic District." *HPRB Actions*, 1 (Oct. 27 and Nov. 3, 2016). According to the meeting minutes, the HPRB, in a 5-0 vote, found the Licensee's "concept incompatible with the character of the Kalorama Triangle Historic District and inconsistent with the purposes of the preservation act." *Id.* at 2. No further document provided to the Board indicates that the Licensee has corrected any issues identified by the HPRB or sought to have the determination changed.

## CONCLUSIONS OF LAW

17. 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).

18. 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.

19. 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 or location in the approximately four years that the license has been held in safekeeping. *Supra*, at ¶ 1.

20. Nevertheless, the law allows the Board 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.

21. There has also been a lack of adequate, diligent, or reasonable progress to reconstruct or rebuild the proposed new location for the license at 1815 Columbia Rd., N.W. *Supra*, at ¶ 4. To date, no application to move the license to 1815 Columbia Rd., N.W., has been filed. *Supra*, at ¶ 1. During a hearing in 2014, the Licensee indicated that she expected to lease the property within a year, but as of 2019 no tenant has executed a lease or been identified. *Supra*, at ¶ 2, 8. The Licensee previously indicated in 2017 that she planned to demolish and rebuild the property. *Supra*, at ¶ 4. Yet, the Licensee has switched architects multiple times, including the one presented at the hearing, and the most recent architectural services contract was not entered into until *after the hearing* on January 9, 2019. *Supra*, at ¶¶ 7, 12. In 2016, the Licensee was informed that the project failed to conform with the HPRB’s requirements, and informed in 2018 that this interfered with getting additional permits from DCRA, yet, to date, there is no indication that she has remedied the situation, despite being on notice of the problem with HPRB in 2016. *Supra*, at ¶¶ 10, 15-16. Therefore, under these circumstances, the Board cannot make a finding of reasonable progress related to the reconstruction or rebuilding of 1815 Columbia Rd., N.W., when the Licensee has had an adequate length of time to find and hire the appropriate contractors necessary to complete her project, obtain permits, and correct issues identified by other government agencies.

22. 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. *Supra*, at ¶¶ 2-3, 6. As a result, the Licensee has not satisfied the “complete the sale” grounds provided by § 25-791(b).

23. 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, maintaining the license as an investment device, or holding the license until market conditions change as valid reasons for maintaining an inactive license.

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

### **ORDER**

Therefore, the Board, on this 13th day February 2019, hereby **DENIES** the application for an extension of safekeeping filed by the Licensee. ABRA shall **CANCEL** ABRA License No. 91955 in accordance with D.C. Official Code § 25-791. A copy of this Order shall be delivered to the Licensee.

District of Columbia  
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson

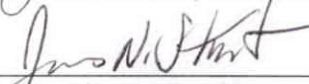
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Nick Alberti, Member



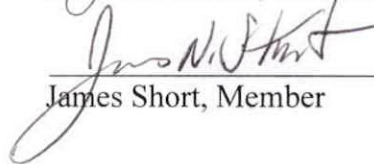
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Mike Silverstein, Member



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James Short, Member



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Bobby Cato, Member



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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).