THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE AND CANNABIS BOARD

In the Matter of:		
GF, LLC t/a Il Canale	Case No.: License No:	19-PRO-00033 ABRA-083707
	Order No:	2024-104
Application to Renew a Retailer's Class CR License		
at premises 1063-1065 31st Street, N.W. Washington, D.C. 20007		

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Silas Grant, Member

PARTIES: GF, LLC, t/a Il Canale, Applicant

Stephen J. O'Brien, Counsel, on behalf of the Applicant

John Uhar, Abutting Property Owner, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

The Alcoholic Beverage and Cannabis Board (Board) approves the Application to Renew a Retailer's Class CR License filed by GF, LLC, t/a Il Canale (hereinafter "Applicant" or "Il Canale"). In particular, the Board is not persuaded by the Protestant's contrived, speculative, and meritless allegations that the owner of Il Canale, Guiseppe Farruggio, has ever engaged in fraudulent misstatements. Therefore, Il Canale merits renewal of its license.

Procedural Background

On August 15, 2023, the District of Columbia Court of Appeals vacated and remanded Board Order No. 2020-081 "for further proceedings with respect to Mr. Uhar's claim that Il Canale's owner lacked good character because Il Canale made fraudulent misstatements in administrative proceedings." *John G. Uhar v. D.C. Alcoholic Beverage Control Board*, 20-AA-021, 9 (D.C. 2023). In light of this decision, the Board reopened the proceedings for the sole purpose of addressing this single issue identified by the D.C. Court of Appeals.[1] This means that, except for the issue on remand, the ownership is otherwise deemed fit for licensure under D.C. Official Code § 25-301(a)(1). *In re GF, LLC, t/a Il Canale*, Case No. 19-PRO-00033, Board Order No. 2020-081, ¶ 20 (D.C.A.B.C.B. Feb. 5, 2020).

In Board Order No. 2023-441, the Board required the Protestant to clarify its claims in accordance with § 2-509(a) of the District of Columbia Administrative Procedure Act and due process. *In re GF, LLC, t/a Il Canale*, Case No. 19-PRO-00033, Board Order No. 2023-441 2 (D.C.A.B.C.B. Sept. 13, 2023).

In Board Order No. 2023-598, the Board granted in part and denied in part the Applicant's motion to dismiss the Protest based on the failure of the Protestant to comply with the Board's instructions to file information clarifying his claims. *In re GF, LLC, t/a Il Canale*, Case No. 19-PRO-00033, Board Order No. 2023-598, 4 (D.C.A.B.C.B. Nov. 8, 2023) [*Motion Order*]. Based on the Board's decision, the issue under the review is limited to the following four allegations:

Allegation 1:	**The allegation in the PIF alleging "that the submission of a sidewalk café plan to DCRA was fraudulent."** ***Uhar Protestant Information Form, at 1*** **("showing 12 seats at the bar where 6 are permitted, again in violation of DCMR 25-762").**
Allegation 2:	**The allegation in Uhar Complaint #1 that the testimony of Mr. Farruggio, on May 23, 2016, in Lines 7 through 19 of the transcript (dated May 23, 2016) on page 6, constitute fraud; specifically the statement:** ***I'm not applying for anything new. I'm applying for the license as it stands. But Mr. Uhar and Mr. Uhar*** **[sic]** ***assume that I am applying my license for the whole building and my license right now is for the bottom floor and 1063 and 1065 bottom floor.***[2]

[1] The court agreed with the Board's determination that the violations cited by the Protestant did not merit denial of the application. *John G. Uhar v. D.C. Alcoholic Beverage Control Board*, 20-AA-021, 9 (D.C. 2023) ("the Board in its written decision ruled in the alternative that Mr. Uhar's allegations about violations of the District's fire, construction, health and public space rules" were not sufficiently serious as to warrant denial of Il Canale's application. We owe deference to the Board's conclusion on that point.") (quotation marks removed).

[2] The Board notes that Board Order No. 2023-598 contains a clerical error in Allegation 2 that misidentifies the relevant dates of the statements made by Mr. Farruggio identified by the Protestant. Board Order No. 2023-598, at 6; *ABRA Complaint #1 Failure to Obtain Approval to Expand to Another Floor in Violation of DCMR 25-762*

Allegation 3: **The allegation in Complaint #3 that the Applicant used a "counterfeit occupancy permit since 2/15/2015" in violation of D.C. Official Code §§ 25-401 and 25-835.**

Allegation 4: **The allegation in Complaint #4 of using four counterfeit fence permits "on the rear door of 1065 31st" and "the window on the front of 1065 31st" on a date and time that was not clearly identified in the complaint in violation of §§ 25-401 and 25-835.[3]**

Board Order No. 2023-598, at 11.

The Board further instructed the parties that unless otherwise stated all allegations of fraud would be generally viewed through the *Bennet* test, which generally requires a finding of fraud to be based on "(1) a false representation (2) in reference to material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) action is taken in reliance upon the representation." *Bennett v. Kiggins*, 377 A.2d 57, 59 (D.C. 1977).

On January 10, 2024, the parties came before the Board for the Remand Protest Hearing to argue their respective cases. Only the Protestant filed Proposed Findings of Fact and Conclusions of Law.[4]

Burden of Proof and Evidentiary Standard

The burden of proof in this matter is assigned to the Applicant. D.C. Code § 25-311(a). ". . . [T]he Applicant in meeting its burden may rely on the record as a whole, which includes information provided in the Protest Report and the Protestant's case, and not just what the Applicant presents during its case-in-chief." *In re The New 7307, t/a Premier Lounge,* Case No. 22-PRO-000222, Board Order No. 2022-701, ¶ 1 (D.C.A.B.C. B. Oct. 19, 2022) *citing Esgar Corp. v. Commissioner of Internal Revenue*, 744 F.3d 648, 655 (10th Cir. 2014); *see also Washington Metro. Area Transit Auth. v. Dist. of Columbia Dept. of Employment Services*, 992 A.2d 1276, 1283 (D.C. 2010) *citing Dale v. S & S Builders, LLC,* 188 P.3d 554, 561 (Wyo. 2008) (saying in determining whether a party met its burden during an administrative hearing the court will look at the "record as a whole").

(b)(3), DCMR 25-762(b)(1) and Other DC ABRA and DCMR Regulations, at 1 ("Testifying under oath on May 23, 2016"). At no point has any party notified the Board of any error and it appears to be harmless error as the Board's analysis does not change and the parties were aware of the statement at issue.

[3] *Complaint #4* (May 8, 2019) *citing* Exhibit Nos. 7-10.

[4] The Board notes that none of the submitted documents constituting the Protestant's proposed findings addressed any of the relevant allegations in a meaningful, coherent, or organized fashion, and the brief constitutes an intentional and inappropriate attempt to inject matters outside the scope of the remand hearing (e.g., matters from 2024), rendering the documents unhelpful in making the Protestant's case.

Furthermore, in determining whether the Applicant has met its burden, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2024). 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).

It should be noted that ". . . hearsay evidence is admissible in administrative proceedings" and may constitute "substantial evidence." *Compton v. Dist. of Columbia Bd. of Psychology*, 858 A.2d 470, 476 (D.C. 2004). In that vein, "The weight to be given to any piece of hearsay evidence is a function of its truthfulness, reasonableness, and credibility." *Id*. at 477. Nevertheless, the court has warned that "administrative findings and conclusions based exclusively on hearsay [are subject] to exacting scrutiny." *Compton*, 858 A.2d at 478. Furthermore, the Board heeds that warning of the court that when a "declarant is available to testify and be cross-examined, the practice of relying exclusively on hearsay is strongly discouraged and should be heavily weighted against the sponsoring party." *Id*. at 479.

FINDINGS OF FACT

The following statements represent the Board's findings of fact based on the evidentiary record. In reaching its determination, the Board considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file. The Board credits all testimony and evidence identified or cited below unless otherwise stated.

I. Background

1. GF, LLC, t/a Il Canale has submitted an Application to Renew a Retailer's Class CR License at 1063-1065 31st Street, N.W., Washington, D.C. *Notice of Public Hearing*.[5]

2. Guiseppe Farruggio is the owner of Il Canale. Mr. Farruggio has never knowingly lied to a District government agency to obtain a permit. *Id*. at 87.

3. In 2009, he had an ownership interest in FLB, DC (Fratelli La Bufala). *Transcript,* January 10, 2024 at 22.[6] He noted that his role in FLB was as an "investor" and "silent partner."

[5] Protestant's Exhibit 4 are multiple settlement agreements between the Applicant, ANC 2E, a citizens association, and the Applicant, as well as a prior separate agreement involving a different establishment at the same location. *Protestant Exhibit No. 4*. The Board notes that this document is irrelevant to the allegations at issue, and the Board has not been persuaded that merely entering into a settlement agreement or having misstatements contained in a settlement agreement can ever constitute fraud for the reasons stated in Board Order No. 2023-598. *In re GF, Inc., t/a Il Canale*, Case No. 19-PRO-00033, Board Order No. 2023-598, 7-8 (D.C.A.B.C.B. Nov. 8, 2023). As a result, the exhibit is unpersuasive, and the Board advises the Protestant that any fraudulent misstatement claims related to the various cited settlement agreements are baseless, frivolous, and completely without merit as a matter of law and fact.

[6] During the hearing, and as noted previously, the Protestant attempted to inappropriately inject a rejected allegation regarding alleged fraudulent statements contained in an old settlement agreement. *Transcript* (*Tr.*), January 10, 2024 at 26-27. The Board notes that this claim was rejected on the merits in Board Order No. 2024-598. *In re GF, LLC, t/a Il Canale*, Case No. 19-PRO-00033, at 7-8 (D.C.A.B.C.B. Nov. 8, 2023). This further means that

Id. at 28, 61-62.[7] He noted that the "partner that had the majority" and a "secretary" handled FLB's affairs. *Id*. He further noted that the business's affairs at the time were handled by "David Harrison," which included handling the transfer to a new licensee, which the owner only signed off on under the belief that he was doing "the right thing." *Id*. at 28-29, 63.[8]

4. On May 23, 2016, Mr. Farruggio appeared at a hearing and made the statement: "I'm not applying for anything new. I'm applying for the license as it stands. But Mr. Uhar and Mr. Uhar [sic] assume that I am applying my license for the whole building and my license right now is for the bottom floor and 1063 and 1065 bottom floor." *Tr.,* May 23, 2016 at 6.[9] The Board notes that the transcript indicates that the person presiding over the hearing was the Board's Agent LaVerne Fletcher who only presides over Roll Call Hearings. There is no indication that Mr. Farruggio made the statement under oath or presented the statement as evidence in a hearing. The Board further notes that Roll Call Hearings are defined as a hearing where "the applicant and protestant are introduced to each other and the grounds for objection to the license application are read to the public." D.C. Code § 25-101(44B). Based on the ministerial nature and purpose of such proceedings and the evidence in the record, the statement had no material impact on the protest or the issuance or renewal of the license, and there is no evidence of material or detrimental reliance on the part of ABCA based on that statement.[10]

Protestant Exhibit Nos. 2, 3, and 9 are irrelevant and unpersuasive. *Letter from Karen Jackson, Licensing Specialist, to Candace Fitch*, at 1 (Apr. 8, 2009) (*Fitch Letter*); *Protestant Exhibit No. 3* (Alcohol License issued to FLB DC, LLC, t/a Fratelli L Bufala, ABRA License No. 081341).

[7] The Board does not agree with the Protestant that Mr. Farruggio is responsible for any errors, omissions, misstatements, or even lies—if that were even shown in the record—committed by FLB based on the uncontroverted evidence that he was not directing FLB's affairs at the time. *Tr*., 1/10/24 at 119-20. Moreover, to the extent any such activity committed by FLB is linked to the present Applicant, it is equally likely or more likely than not that Mr. Farruggio relied on such representations and should not be held liable for such actions, as hold over documents and information provided through FLB reasonably defeat any claim of knowledge or intent to deceive that is required as part of a showing related to fraud, as the owner could reasonably rely on such information without deceptive intent. This further means, as noted in the prior footnote, that Protestant Exhibits No. 2 and 3 are irrelevant. *Letter from Karen Jackson, Licensing Specialist, to Candace Fitch*, at 1 (Apr. 8, 2009) (*Fitch Letter*); *Protestant Exhibit No. 3* (Alcohol License issued to FLB DC, LLC, t/a Fratelli L Bufala, ABRA License No. 081341). This also means that the exhibits in Protestant Exhibit No. 7 related to FLB (i.e., Exhibits Nos. 1, 2, and 3) are unpersuasive. *Protestant's Exhibit No. 7* (Exhibit Nos. 1-3) (showing a page from a transcript, a certificate of occupancy, and May 22, 2009 document issued by the United States Commission of the Fine Arts).

[8] It appears that part of the basis of the Protestant's case is that that the denial, return, or withdrawal of an application related to a sidewalk café submitted to one or more D.C. government agencies and the U.S. Commission of Fine Arts merits a finding of fraud. *Tr*. 1/10/24 at 63-64; *Protestant's Complaint #3*, *Exhibit Nos. 3-4.* Even if true, the Board notes that proceeding to operate a sidewalk café after the denial, return, or withdrawal of an application is not fraud, but rather a violation of other laws related to the operation of a sidewalk café or operating in public space without appropriate authority. The Board notes that this renders Exhibit Nos. 4 through 7 in Protestant's Exhibit No. 7 unpersuasive.

[9] The Board notes that the Protestant attempts to argue that the Applicant's efforts to expand the establishment after 2016 are fraudulent given the 2016 statement on the record. *Protestant Exhibit No. 5; Tr*., Jan. 10, 2024 at 32. Nevertheless, this claim is incomprehensible, as the owner's application or the 2016 statement did not prohibit the business from seeking to expand after the fact.

[10] This renders Protestant's Exhibit No. 5 and the attached documents unpersuasive.

5. The Protestant presented a picture of construction. *Protestant's Complaint #4, Exhibit No. 1*. The owner believed that it was constructed on his property, not the alley. *Tr*., 1/10/24 at 36. During the hearing, the Protestant did not direct the Board to a specific statement in a document or application made by Mr. Farruggio related to this construction.

6. The Protestant presented a picture of fence permits. *Protestant's Complaint #4*, Exhibit No. 9-11. Mr. Farruggio indicated that he removed property after being informed he needed a permit from a District agency. *Tr*., 1/10/24 at 38. He indicated that he leased property with a walk-in refrigerator present and was unaware he needed a permit for it. *Id*. at 41. In response to the allegation that he improperly built a fence or other construction on Lot 842, Mr. Farruggio believed that the permit covered all of his property behind the establishment, and he believes he has all of the required permits for such activity. *Id*. at 43, 47-48. He also noted that an architect took care of the application for the permit, not himself. *Id*. at 43, 87.[11]

7. The Protestant showed an occupancy permit dated January 28, 2015. *Id*. at 71. A third party filled out the permit application, not Mr. Farruggio. *Id*. Consequently, all omissions, errors, and mistakes in the form, to the extent any exist, were made by the third party, not Mr. Farruggio. *Id*. at 73. In addition, a survey obtained as part of the record was provided by the establishment's landlord or architect, not Mr. Farruggio, and was solely the creation of a third party. *Id*. at 74.

8. The Board does not fully credit the communications from Richard Livingstone on or around July, 13, 2018. *Protestant's Complaint #3*, *Exhibit No. 9*. Richard Livingston's position in the email is identified as the "Liaison" for Ward 2. There is no evidence in the record that he had personal knowledge of the applicant's sidewalk café, reviewed any applications related to the Applicant's sidewalk café, or had job responsibilities related to the issuance of such permits. Instead, the Board infers from Mr. Livingstone's statement, "The sidewalk café for 1063-1065 is now permitted," is that he got the information to make that statement from an unidentified third party. *Id*. As a result, Mr. Livingstone's email merits being deemed non-credible hearsay for the purposes of establishing fraud, and even if it were not, it would have minimal and unpersuasive value, as there is no information in the record regarding the underlying basis for Mr. Livingstone's statement and nothing in his statements indicate an iota of fraud. *Compton*, 858 A.2d at 479.[12] Nevertheless, the Board accepts the statement for the purpose of showing that Mr. Farruggio has a reasonable basis for believing his sidewalk café is permitted, and that any violation, should such a violation exist, is based on a mistaken belief.

9. The Board heard the testimony from ABCA Investigator Mikea Nelson and notes that she did not have personal knowledge or information relevant to the issues under consideration. *Tr*., 1/10/24 at 91-113. She further stated that she had no knowledge of any lying committed by Mr. Farruggio. *Id*. at 106-07.

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[11] The Protestant's argument that Mr. Farrugio disregards the advice of third parties is wholly speculative and not supported by evidence on the record. *Tr*., 1/10/24 at 55.

[12] Mr. Uhar's statement that Mr. Livingstone actually gave "permission to run outdoor sidewalk cafés" is not supported by any evidence in the record. *Tr*., 1/10/24 at 119.

10. The uncontroverted evidence in the record is that the exhibit of the plat showing Lot 64 and Lot 842 depicting a building where no building is present was not prepared by the owner, but rather the D.C. Office of the Surveyor. *Protestant's Complaint No. 3*, *Exhibit 8*; *Tr.*. 1/10/24. There is no indication that the owner is responsible for the error in the survey or that any person intended to insert an error when producing the document.

11. The Board further credits the Applicant's showing that the 2018 sidewalk café permit issued by DDOT listed the correct measurements of the combined lots, but merely failed to list both lot numbers. *Tr.*, 1/10/24 at 131, 140-41. No evidence in the record shows that any error on the part of the issuer was caused by the owner.[13]

12. The Protestant failed to present evidence regarding any specific motive or benefit the owner would receive by making the alleged errors or that he would not have been able to secure any permit or license had the correct information been provided in any application filed with the government.

CONCLUSIONS OF LAW

13. Based on the resolution of all other outstanding issues in these proceedings related to the renewal of the license, the Board may approve the Application to Renew a Retailer's Class CR filed by the Applicant, if it finds the Applicant fit for license pursuant to D.C. Official Code § 25-301(a)(1). In this case, based on the evidence in the record and the Board's prior upheld findings, the Board agrees with the Applicant, that the owner, Mr. Farruggio is fit for licensure.

14. "Before the Board may issue a license, it must determine that . . . [t]he applicant is of good character and generally fit for the responsibilities of licensure." D.C. Code § 25-301(a)(1). The Board "must . . . evaluate each applicant individually, on a case-by-case basis" because "the character of the applicant . . . will necessarily differ from one application to the next . . . ." *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1195 (D.C. 1985). At the very least, in order to satisfy the requirements of § 25-301(a)(1), the Board must examine "records, covering the last 10 years from the date of application, maintained by ABRA regarding prior violations of the District's alcohol laws and regulations by the applicant or establishments owned or controlled by the applicant." D.C. Code § 25-301(a-1).

15. Various court decisions describe relevant facts in determining character and fitness. For example, in *Citizens Association of Georgetown*, Chief Judge Hood, in concurrence, indicated that the Board must satisfy itself that the individual will not abuse or misuse, the privileges of the license if granted, and that a man's past record, as disclosed by his application, and his appearance before the Board, may furnish a sufficient basis for the Board's conclusion." *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 288 A.2d 666, 672 (D.C. 1972) (Chief J., Hood concurring). In *Haight*, the court suggested that when a licensee ". . . operates in a lawful manner" the Board cannot deem this evidence of bad moral character or unfitness for licensure, because the licensee would not have ". . . fair notice as to what conduct is proscribed by the statute for purposes of eligibility for a liquor license." *Haight v. D.C.*

[13] For example, a statement by DDOT indicating that the error was caused by intentionally incorrect information placed in the application.

Alcoholic Beverage Control Bd., 439 A.2d 487, 493 n. 10 (D.C. 1981). Therefore, among other factors, the Board may consider illegal conduct in determining whether an Applicant satisfies § 25-301(a)(1). In *Uhar*, the court indicated that the Board may consider "fraudulent misstatements in administrative proceedings" as grounds for finding a lack of good character. *John G. Uhar v. D.C. Alcoholic Beverage Control Board*, 20-AA-021, 9 (D.C. 2023).

I. THE OWNERSHIP IS FIT FOR LICENSURE.

16. The Board finds the Applicant fit for licensure, and finds claims that the owner, Mr. Farruggio, made fraudulent statements to the government to be meritless and speculative on the part of the Protestant.

A. The Board finds in favor of the Applicant regarding Allegation 1.

17. Allegation 1 is the accusation in the Protestant's PIF that "that the submission of a sidewalk café plan to DCRA was fraudulent." *Uhar Protestant Information Form, at 1* ("showing 12 seats at the bar where 6 are permitted, again in violation of DCMR 25-762").

18. The Board is not persuaded that any fraud occurred related to the submission of plans to DCRA, which was undeveloped at trial by the Protestant and apparently abandoned and waived. *In re Johnson*, 275 A.3d 268, 281 (D.C. 2022) (saying "vague one-line conclusory assertions" that "fail[] to cite authority in this jurisdiction or any other to support his arguments" must be "waived since undeveloped legal arguments will not be entertained on appeal"). In this case, the specific document related to this claim containing any alleged fraud was not clearly identified and the specific alleged false statement was not directed to the attention of the Board during the trial suggesting abandonment and waiver.

19. Nevertheless, even if considered on the merits, the Protestant's claim is unpersuasive. As noted in *Bennet*, a finding of fraud must be based on "(1) a false representation (2) in reference to material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) action is taken in reliance upon the representation." *Bennett v. Kiggins*, 377 A.2d 57, 59 (D.C. 1977). As noted in *Powell*, "To find that a misstatement was made with knowledge of its falsity, the person accused, and not "a hypothetical reasonable person," must be found to have known that the statement was false, or to have made that statement with reckless indifference as to its truth." *Powell v. Dist. of Columbia Hous. Auth.*, 818 A.2d 188, 197–98 (D.C. 2003) (quotation marks removed). In *Powell*, the court further noted that the mere signature of a person on a document "without more" showing a "subjective understanding," is not sufficient to establish knowledge even if that document contains a third-party statement regarding the specific information being sworn to. *Id*. at 198.

20. In this case, no witness with direct knowledge of the events, such as the government agent reviewing the application or document, stated that they reviewed the statement, were misled by the statement, testified that the statement was material, or that he or she approved a permit or license because of a fraudulent statement. As a result, it is not possible to establish fraud based on the paltry record created by the Protestant. This means that based on the record there is insufficient information to demonstrate the element of knowledge or subjective

understanding of the falsity on the part of the owner, as was the case in *Powell*. Furthermore, if any such errors made by the Applicant in the application exist, they were equally likely or more likely to be mere mistakes and inadvertent errors made without the intent to deceive and without knowledge of the falsity. Under these facts, the Board also cannot discount that any issuance of the government that may have been in error was due to the error of the government, and not the Applicant. Finally, even if the Protestant were correct that the Applicant made a substantial change without approval related to this fact, this would only constitute a substantial change violation, and does not qualify as fraud.[14]

21. As a result, based on this reasoning, the Board finds in favor of the Applicant on this issue and agrees that the facts do not support an allegation of fraud in the matters raised by Allegation 1.

B. The Board finds in favor of the Applicant regarding Allegation 2.

22. Allegation 2 involves the allegation in Complaint #1 that the testimony of Mr. Farruggio, in 2016 constitutes fraud; specifically the statement: "I'm not applying for anything new. I'm applying for the license as it stands. But Mr. Uhar and Mr. Uhar [sic] assume that I am applying my license for the whole building and my license right now is for the bottom floor and 1063 and 1065 bottom floor." *Supra*, at ¶ 4.

23. As noted in *Bennet*, a finding of fraud must be based on "(1) a false representation (2) in reference to material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) action is taken in reliance upon the representation." *Bennett v. Kiggins*, 377 A.2d 57, 59 (D.C. 1977). As noted in the findings of fact, the statement was not made under oath, was not an evidentiary statement, or useful as testimony; had no material impact on the Roll Call Hearing where it occurred; and there is no evidence of detrimental reliance. *Supra*, at ¶ 4. As such, the Board must find in favor of the Applicant regarding Allegation 2, because the referenced statement does not meet the threshold or basic elements of fraud.

C. The Board finds in favor of the Applicant regarding Allegation 3.

24. In Allegation 3, the Protestant alleged that the Applicant used a "counterfeit occupancy permit since 2/15/2015" in violation of D.C. Official Code §§ 25-401 and 25-835.

25. Under D.C. Official Code § 25-401(c),

[14] Even if the Board were to credit Protestant's Exhibit No. 6, the actions of the Applicant would be operating without a required license or permit, not false misrepresentation. *Protestant's Exhibit No. 6.* Indeed, even if such an action could constitute fraud, the attached exhibits related to the D.C. Department of Consumer and Regulatory Affairs (DCRA) database documents are not sufficient to show the required *mens rea* or intent to deceive to establish a claim of fraud, as they tell the Board nothing about the knowledge of the owner or his state of mind. Finally, the Board further reminds the Protestant that the Board has already decided that these type of failure to obtain a permit or license violations do not merit the revocation of the license in this matter. *John G.* Uhar, 20-AA-021 at 9 ("the Board in its written decision ruled in the alternative that Mr. Uhar's allegations about "violations of the District's fire, construction, health and public space rules" were not sufficiently serious as to warrant denial of Il Canale's application. We owe deference to the Board's conclusion on that point").

> Any person who *knowingly* makes a false statement on an application, or in any accompanying statement under oath that the Mayor or the Board may require, shall be guilty of the offense of making false statements. The making of a false statement, whether made with or without the knowledge or consent of the applicant, *shall, in the discretion of the Board,* constitute sufficient cause for denial of the application or revocation of the license.

D.C. Code § 25-401(c).

26. Furthermore, under § 25-401(d),

> It shall be a primary tier violation for a person to *knowingly* submit an altered document or application to the Board for the purpose of deceiving the Board. The submission of an altered document intended to deceive the Board, *may, at the discretion of the Board*, constitute sufficient cause for denial of the application or revocation of the license.

D.C. Code § 25-401(d). Section 25-401(d) is limited to cases where a person physically alters a document. In this case, there is no evidence that Mr. Farruggio physically forged or altered a document; therefore, there is no basis for finding a violation of § 25-401(d).

27. In the alternative, even if the Protestant's allegation were correct, § 25-401(c) further provides that revocation of the license for this offense is entirely at the discretion of the Board and not mandated. Therefore, in light of evidence that Mr. Farruggio did not intend or have direct knowledge of any such misstatements, the Board does not find that denial or revocation is an appropriate penalty and would refrain from imposing such a penalty if a violation under § 25-401 were found; therefore, this claim by the Protestant should be deemed moot, as the Protestant's requested remedy would not be granted.

28. Under § 25-835,

> (a) It shall be unlawful for a person to willfully or knowingly alter, forge, counterfeit, or endorse a document, or make use of any false or misleading document, reasonably calculated to deceive the public as being a genuine document or license *issued by ABCA*.
>
> (b) It shall be unlawful for a person to willfully or knowingly furnish to a member of the Metropolitan Police Department ("MPD") or an ABCA investigator an altered, forged, counterfeited, endorsed, or false or misleading document reasonably calculated to deceive MPD or the ABCA investigator as being a genuine document or license *issued by ABCA*.

D.C. Code § 25-835(a)-(b) (emphasis added). The Board dismisses this aspect of the claim because § 25-835 solely addresses documents issued by ABCA, not other agencies, and is frivolous.

29. The Board further is not persuaded that any fraud under the *Bennet* test occurred related to the 2015 occupancy permit. There is no evidence that the ownership manipulated or altered any government document. Moreover, no witness with direct knowledge of the events, such as

the government agent reviewing the application or document related to the permits, stated that they reviewed a statement made by the owner, were misled by such a statement, testified that the statement was material, or that he or she approved a permit or license because of any fraudulent statement. As a result, it is not possible to establish fraud based on the paltry record created by the Protestant. This means that based on the record the Board cannot infer the Applicant had the requisite level of knowledge, as was the case in *Powell*. Moreover, if any such errors made by the Applicant in the application exist, they were equally likely or more likely to be mere mistakes and inadvertent errors made without the intent to deceive or knowledge of the falsity. Under these facts, the Board also cannot discount that any issuance of the government that may have been in error was due to the error of the government, and not the Applicant. Finally, it appears that the documents related to the occupancy permit were filled out, created, and submitted by one or more third parties; therefore, this further bolsters the Board's conclusion that the record lacks insufficient evidence to demonstrate knowledge of the falsity on the part of the owner or an intent to deceive. *Supra*, at ¶ 7.

D. The Board finds in favor of the Applicant regarding Allegation 4.

30. Allegation 4 involves an allegation that the owner used counterfeit fence permits "on the rear door of 1065 31st" and "the window on the front of 1065 31st" on a date and time that was not clearly identified in the complaint in violation of §§ 25-401 and 25-835.

31. There is no indication in the record that the owner created fake permits; therefore, it is not possible to demonstrate a violation of § 25-401(d). The Board further notes that the record lacks any credible evidence that the owner intended to "deceiv[e]" the Board. D.C. Code § 25-401(d).

32. It is also not possible to demonstrate a violation of § 25-401(c), because even if truly fake, there is no indication in the record that the fence permits were submitted as part of a specific application submitted to ABCA, and it was not shown that the agency relied on the permits in any way. D.C. Code § 25-401(c)-(d). Moreover, a permit is not an application; therefore, the public posting of a counterfeit permit cannot constitute a violation of § 25-401, as that section only applies to "application[s]," and such an act is not under "oath" as required by § 25-401(c). D.C. Code § 25-401(c). Finally, the record contained insufficient evidence to demonstrate that the "knowingly" *mens rea* requirement was satisfied, as any error related to the use of permits or in the application of such permits could be equally as likely or more than likely the result of innocent mistake or government error.

33. The Board is also not persuaded that the allegations of the Protestant constitute a violation of § 25-835. The Board notes that ABCA does not issue fence permits; therefore, the allegations cannot constitute a violation of § 25-835 as a matter of law. There is also no evidence that the owner forged or counterfeited the documents. Consequently, this claim is not supported by the record, and is frivolous.

34. The Board further is not persuaded that any fraud under the *Bennet* test occurred related to the fence permits. There is no evidence that the ownership manipulated or altered any government document. Moreover, no witness with direct knowledge of the events, such as the

government agent reviewing the application or document related to the permits, stated that they reviewed a statement made by the owner, were misled by such a statement, testified that the statement was material, or that he or she approved a permit or license because of any fraudulent statement. This means that based on the record the Board can only presume that the Applicant did not commit fraud, did not have any subjective understanding or knowledge of fraud when the permits were applied for, and that if any such errors made by the Applicant in the application exist, they were equally likely or more likely to be mere mistakes and inadvertent errors made without the intent to deceive or knowledge of the falsity. Under these facts, the Board also cannot discount that any issuance of the government that may have been in error was due to the error of the government, and not the Applicant. Finally, it appears that the documents related to the fence permit were filled out, created, and submitted by a third party; therefore, there is insufficient evidence to demonstrate knowledge of the falsity on the part of the owner or an intent to deceive. *Supra*, at ¶ 4.

35. Separate and apart from the above**,** the Board also does not agree with the Protestant that even if true, the illegal erection of a fence on one lot, while having a fence permit for another lot constitutes fraud, as such action is merely a violation of any requirement to obtain an appropriate permit. [15] *Tr*, 1/10/24 at 123-24.[16]

E. The element of reliance on any statement contained in an application cannot be established because the government had the ability to investigate the claims.

36. In this matter, the Board is further persuaded that no fraud related to any statement in an application may be established under the *Bennet* test because the element of reliance cannot be proven in any allegation. As noted in *Drake*, "Even if representations are false or misleading, it is unreasonable for a party to rely on those representations if the party had an adequate opportunity to conduct an independent investigation and the party making the representation did not have exclusive access to such information." *Drake v. McNair*, 993 A.2d 607, 621 (D.C. 2010) (quotation marks removed). This means that even if the owner intentionally filed a false application with a government agency, it has not been shown that the government lacked an adequate opportunity to conduct an independent investigation or that such information was not available to the government (e.g., lot numbers, measurements, etc.).

37. Therefore, the Board is not persuaded that the Applicant committed any fraudulent misstatements, and the Board affirms its findings in favor of the Applicant's character and fitness.

[15] As stated previously, even if true, the Protestant's claim that the licensee engaged in any illegal construction (e.g., fence, tent, patio, building, etc.) does not constitute fraud, but rather a violation of the requirement to obtain approval, whether through a license or permit. This renders Protestant's Exhibit No. 8 and the attached exhibits unpersuasive, as they fail to show the requisite *mens rea* or intent to deceive.

[16] The Board notes that in Complaint #4 the Protestant makes a claim that the Applicant is blocking public space. *Protestant's Exhibit No. 8*, at 3. The Board notes that blocking access to public space does not constitute fraud.

II. THE APPLICATION SATISFIES ALL REMAINING REQUIREMENTS IMPOSED BY TITLE 25.

38. 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. 2024). 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 13th day of March 2024, hereby **APPROVES** the Application to Renew a Retailer's Class CR License filed by Il Canale and finds the ownership fit for licensure.

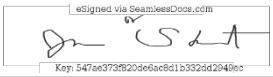
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision. The omission of any testimony or evidence in the Board's Order indicates that such testimony or evidence was contravened by the evidence or testimony credited by the Board, had no or minimal weight on the Board's findings and conclusions, was irrelevant, was not credible, was not truthful, was repetitious, was too speculative, or was otherwise inappropriate for consideration.

SECTION 1900 STATEMENT: Separate and apart from the above, to dispense with the issue of § 1900 compliance raised by the Protestant, the Board **ADVISES** the Protestant that all complaints regarding submissions to other agencies (e.g. Future Complaint #1, Future Complaint #2) should be presented to the agency issuing the document, license, or permit (e.g., the Historic Preservation Board, the D.C. Department of Buildings, and the U.S. Commission of Fine Arts)—not ABCA—for investigation and enforcement. *Protestant's Proposed Findings of Fact and Conclusions of Law,* at 1. In such cases, ABCA is not the appropriate agency to determine whether a violation of another agency's processes, procedures, laws, and regulations have occurred, and the agency is entitled to solely rely on other agencies to investigate matters that fall under their jurisdiction. Furthermore, Complaint #3 is unmeritorious, nonsensical, frivolous, and relies on a made-up legal right to personal notice regarding notice of a settlement agreement involving completely separate parties. *Id*. ("Future Complaint #3). As a result, in accordance with 23 DCMR § 1900, regarding all complaints filed by John G. Uhar in the past and as part of this protest, the Board does not deem any of the complaints to merit an enforcement action and the Board further determines that no further action or investigation on the part of ABCA is warranted at this time regarding such complaints. The Board notes that this statement does not constitute a waiver of the Board's position that the Protestant has no standing to object to the agency's enforcement actions related to Il Canale for the reasons stated in Board Order No. 2023-598.

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

District of Columbia
Alcoholic Beverage and Cannabis Board

Donovan Anderson, Chairperson



James Short, Member

Silas Grant, Jr., 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 and Cannabis 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).