

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

In the Matter of:)	
)	
Rodman’s Wisconsin, Inc.)	License Number: 108215
t/a Rodman’s Discount Spirits)	Order Number: 2021-879
)	
Holder of a)	
Retailer’s Class A License)	
at premises)	
4936 Wisconsin Avenue, N.W.)	
Washington, D.C. 20016)	
)	

BEFORE: Donovan Anderson, Chairperson
 James Short, Member
 Bobby Cato, Member
 Rema Wahabzadah, Member
 Rafi Aliya Crockett, Member
 Jeni Hansen, Member
 Edward S. Grandis, Member

NOTICE OF SAFEKEEPING HEARING

On this 1st day of December 2021, Rodman’s Wisconsin, Inc., t/a Rodman’s Discount Spirits, (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 **February 2, 2022, at 10:30 a.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 are 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 has issued ABRA License No. 108215, a Retailer's Class A License, to Rodman's Wisconsin, Inc., t/a Rodman's Discount Spirits, at 4936 Wisconsin Avenue, N.W. *ABRA License No. 108215*. The license is currently in safekeeping with the Board and the Licensee filed a request to extend the safekeeping period for the eighth time. *Notice of Meeting, Licensing Agenda* (Oct. 6, 2021) (see number 4).
2. On November 17, 2021, the Board held a fact-finding hearing to determine the safekeeping status of the Licensee. Before the hearing, the Licensee presented a letter indicating that the business was still searching for space and believed that a nearby establishment that blocked the use of the license at the address occupied by the Licensee's store at 5100 Wisconsin Avenue, N.W., pursuant to D.C. Official Code § 25-333(a), would cease operations by the end of the year. No lease, statement of the owner of the other store, or statement of the landlord confirming this information was presented.
3. The Board notes that the law does not permit the issuance of a Retailer's Class A License when the location is within 400 feet of another operating business holding the same class of license. D.C. Code § 25-333.

PROPOSED CONCLUSIONS OF LAW

4. 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. 2021) (“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).

5. 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 its current address and cannot transfer the license to its desired location.

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 the current address listed on the license. 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). Furthermore, after obtaining repeated extensions, searching for a new address or waiting for another licensee to end operations, is not a reasonable reason for seeking an extension. 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.

11. For these reasons, the Board deems the license abandoned and orders the cancellation of the license pursuant to § 25-791. The Board further notes that cancellation is especially warranted where the Retailer's Class A License is subject to a quota and the Licensee's possession of the license potentially prevents others from opening a business. D.C. Code § 25-331(a).

PROPOSED ORDER

Therefore, the Board hereby **DENIES** the application for an extension filed by the Licensee. ABRA shall **CANCEL** ABRA License No. 108215 in accordance with D.C. Official Code §§ 25-791(a) and 25-791(e).

IT IS FURTHER ORDERED that if the Applicant fails to appear, withdraws their application, or does not challenge this Order, the Proposed Findings of Fact and Conclusions of Law contained in this Order shall become the Findings of Fact and Conclusions of Law of the Board. The Board will further deem this a final order and the application shall be **DENIED** as of the date of the hearing for the reasons stated above. If the Applicant appears at the hearing, the findings of fact and conclusions of law contained in this Order shall remain Proposed Findings of Fact and Conclusions of Law and the Board will hear evidence, testimony, and objections related to its findings, as well as any other information the Applicant wishes to present relevant to this Order.

IT IS FURTHER ORDERED, if this Order becomes final, 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 Board **ADVISES** the Licensee that should the 5100 Wisconsin Avenue, N.W., location become available pursuant to D.C. Official Code § 25-333 before the hearing, the Board will consider holding these proceedings in abeyance upon the filing of a bona fide transfer application with an appropriate motion for a stay or other request.

A copy of this Order shall be delivered to the Licensee.

District of Columbia
Alcoholic Beverage Control Board

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac43cb0656d560e4c730003d1dccc8

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com
James Short
Key: 547ce373f820de6ac8d1b332d2949ec

James Short, Member

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Bobby Cato
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Bobby Cato, Member

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Edward Grandis, Member
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Edward S. Grandis, Member

Pursuant to 23 DCMR § 1719.1 (West Supp. 2021), 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 (West Supp. 2021) 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).