

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

**In the Matter of:**

50/50 LLC  
t/a Wisconsin Wines & Spirits

Application for a New  
Retailer's Class A License

at premises  
3500 Wisconsin Avenue, N.W.  
Washington, D.C. 20016

Case No.: N/A  
License No.: 111684  
Order No.: 2018-650

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

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**ORDER DENYING APPLICATION FOR A NEW RETAILER'S CLASS A  
LICENSE**

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The Alcoholic Beverage Control Board affirms the denial of the Application for a new Retailer's Class A license at 3500 Wisconsin Avenue, N.W., Washington, D.C., filed by 50/50 LLC, t/a Wisconsin Wines and Spirits (WWS) pursuant to D.C. Official Code § 25-333(a), because another Retailer's Class A license is located within 400 feet of WWS's selected address.

In this case, the Class A prohibiting the issuance of a license to WWS is Burka's Fine Wines (BFW), which holds a Retailer's Class A license, is assigned ABRA License No. 086394, and currently located at 3414 Wisconsin Avenue, N.W. The Board notes that 3414 Wisconsin Avenue, N.W., has been determined by ABRA's Licensing Division to fall within the 400 foot zone prohibited by § 25-333(a).

The Board further notes that BFW previously held a Retailer's Class A license at 3500 Wisconsin Avenue, N.W., since 2011. ABRA's records show that before transferring to its new location, the license has never been in safekeeping. ABRA's records further show that it applied for its transfer to a new location and a stipulated license on July 25, 2018. The stipulated license was approved by the Board on September 12, 2018, but was never picked up by BFW. The permanent license was subsequently issued

on October 22, 2018. As of the date of this Order, ABRA's records show that the license is not in safekeeping

As ABRA and the Board reviewed the application filed by BFW, WWS subsequently filed its application on September 26, 2018. On October 3, 2018, the Board voted to deny WWS's application based on its proximity to BFW. *Notice of Meeting, Supplemental Licensing Agenda* (Oct. 3, 2018) (No. 2). On October 17, 2018, ABRA's Licensing Division asked the Board to re-review WWS's application, and the Board similarly voted to deny the application for the same reason. *Notice of Meeting, Second Supplemental Licensing Agenda* (Oct. 17, 2018). For these reasons, WWS's application was never placarded and subject to public notice pursuant to D.C. Official Code § 25-423.

Under § 25-333(a), "No new off-premises retailers license, class A, shall be issued for an establishment which is located within 400 feet from another establishment operating under an off-premises retailer's license, class A." D.C. Code § 25-333(a)

The Board is not aware of a prior written order of the Board addressing the interpretation of § 25-333. While the identity of the type of license affected by the statute and the distance requirement present straight forward matters of interpretation, the phrase "from another establishment operating under an off-premises retailer's license, class A" requires analysis.

Specifically, the Board interprets that phrase as permitting the Board to issue a new off-premises Retailer's Class A license, even though another license of the same class is located at an address within 400 feet of the applicant when the existing licensee's license is in safekeeping with the Board. This interpretation is justified because a license in "safekeeping" is deemed "discontinued" under D.C. Official Code § 25-791(a), which allows for the Board to deem the existing license as not "operating" in accordance with § 25-333(a).

Furthermore, because § 25-333 regulates the Board's power to "issue[]" a license, the Board further interprets § 25-333 as being permitted to be raised by the Board up and until the issuance of the license. This means that a license can be blocked by § 25-333 even if it has been approved, such as in the case where another license happens to be issued within 400 feet between the time of approval or issuance of the second proposed license in the 400 foot zone.

The Board opposes expanding the range of scenarios that avoid the prohibition of § 25-333(a), because it is contrary to public policy. It is well accepted that a high density of alcohol outlets or an overconcentration of alcohol outlets may have a negative impact on the quality of life of residents, including having a negative impact on crime and violence. *See, e.g.*, D.C. Code § 25-314(a)(4). As a result, the Board is highly reluctant to undermine a specific determination by the legislature that has a large impact on public safety and the quality of life of residents.

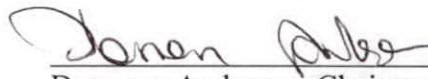
Turning to this case, WWS filed its application on September 26, 2018. It was "dead-on-arrival," because, on that day, BFW held an active Class A license at the same address, which triggered the prohibition found at § 25-333(a). Furthermore, even if this were not the case, the issuance of the transferred Class A license to BFW on October 22,

2018, to an address within the 400 foot zone, further scuttled WWS's application under the same provision. Finally, as ABRA's records show that BFW's license has not been formally placed in safekeeping, there is no basis for proceeding with the application or accepting additional applications for a new Retailer's Class A licenses for any address located within 400 feet of BFW.

**ORDER**

For these reasons, the Board, on this 24th day of October 2018, **DENIES** the Application filed by WWS. Copies of this Order shall be sent to the Applicant.

District of Columbia  
Alcoholic Beverage Control Board



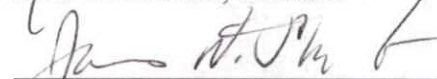
Donovan Anderson, Chairperson



Nick Alberti, Member



Mike Silverstein, Member



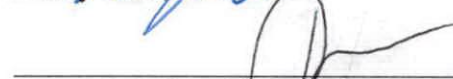
James Short, Member



Donald Isaac, Sr., Member



Bobby Cato, Member



Rema Wahabzadah, Member

Pursuant to 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, 2000 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). 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).