

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

In the Matter of:)	
)	
Don Juan Restaurant, Inc.)	License Number: 015934
t/a Don Juan Restaurant)	Case Number: 10-PRO-00114
)	Order Number: 2010-482
Petition to)	
Terminate a Voluntary Agreement)	
for a Retailer's Class CR License)	
)	
at premises)	
1660 Lamont Street, N.W.)	
Washington, D.C. 20010)	
)	

Jaime T. Carrillo, t/a Don Jaime, represented by Attorney Rick Massumi, Applicant

Sam Broeksmit, on behalf of the Mount Pleasant Neighborhood Alliance (MPNA),
Protestant

BEFORE: Nick Alberti, Acting Chairperson
 Mital Gandhi, Member
 Donald Brooks, Member
 Herman Jones, Member
 Calvin Nophlin, Member
 Mike Silverstein, Member

**AMENDED ORDER DENYING MOTION TO DISMISS AND MOTION TO
POSTPONE PROTEST HEARING**

The Petition to Terminate a Voluntary Agreement for a Retailer's Class CR License filed by Don Juan Restaurant, Inc., t/a Don Juan Restaurant (Applicant), which has been protested by the MPNA (Protestant) came before the Alcoholic Beverage Regulation Administration (ABRA) for a Roll Call Hearing on August 30, 2010, in accordance with D.C. Official Code § 25-601 (2001). The Status Hearing is scheduled for September 22, 2010, and the Protest Hearing is scheduled for November 10, 2010.

On September 15, 2010, by Board Order No. 2010-468, the Alcoholic Beverage Control Board (Board) denied the Motion to Dismiss and the Request to Postpone the Protest Hearing filed by the Protestant. However, Board Order No. 2010-468 did not address the Protestant's argument that, under D.C. Code § 25-338 (2001), "[t]he applicant's request to terminate [its] VA. . . is within the 5 year period during which a second application for the same request may not be made." *ABRA Protest File 10-PRO-00113, August 16, 2010 Request to Dismiss Don Juans's Restaurant's Request to Terminate their VA with MPNA* [sic].

Under § 25-338, it is clear that the Protestant misreads the statute. Section 25-338(a) states that “each subsequent application for the *same class of license* for the same person or persons shall not be considered within 5 years of a denial.” § 25-338(a) (emphasis added). Under the plain language of § 25-338(a), that section only applies to successive applications for an ABC License and nothing more. A petition to terminate a voluntary agreement is not included within the statutory prohibition against successive applications because it is not an application for an ABC License.

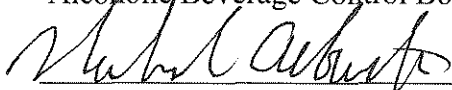
Therefore, the Board reaffirms its decision in Board Order No. 2010-468.

ORDER

Accordingly, it is this 22nd day of September 2010, **ORDERED** that:

1. Board Order No. 2010-468 is **AMENDED** to clarify that the Board rejects MPNA’s argument that Don Juan Restaurant, Inc., t/a Don Juan Restaurant, cannot file a Petition to Terminate a Voluntary Agreement for a Retailer’s Class CR License under D.C. Code § 25-338 (2001).
2. All other terms and conditions of Order No. 2010-468 shall remain in full force and effect; and
3. Copies of this Order shall be sent to the Applicant and to the Protestant.

District of Columbia
Alcoholic Beverage Control Board



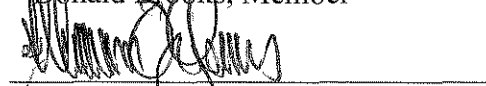
Nick Alberti, Acting Chairperson




Mital M. Gandhi, Member



Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, 1250 U Street, N.W., Third Floor, Washington, DC 20009.