THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
Brightwood Bistro, LLC t/a Brightwood Bistro	)	License Number: 82911 Case Number: 10-PRO-00011 ORDER NUMBER: 2010-360
Applicant for Substantial Change to Retailer's Class CR License at premises 5832 Georgia Avenue, N.W. Washington, D.C. 20011	)	

BEFORE: Charles Brodsky, Chairperson
Mital M. Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ORDER DENYING MOTION FOR RECONSIDERATION

The Application filed by Brightwood Bistro, LLC t/a Brightwood Bistro ("Applicant') for a Substantial Change to a Retailer's Class CR License, having been protested, came before the Alcoholic Beverage Regulation Administration ("ABRA") for a Roll Call Hearing on March 22, 2010, a Status Hearing on April 21, 2010, and a Protest Hearing on June 2, 2010. The Applicant and a Group of Five or More Individuals represented by Jordana Bradley were present at the Protest Hearing. On June 2, 2010, the Group of Five or More Individuals filed a Motion to Dismiss the Applicant's Application. The Motion to Dismiss asserted that the Applicant failed to file its Protest Information Form ("PIF") with ABRA seven days prior to the June 2, 2010, hearing and failed to serve the PIF on all parties as required by the Alcoholic Beverage Control Board ("Board"). On June 2, 2010, the Board heard oral arguments on the Motion to Dismiss. The Board determined that the Applicant filed its PIF on May 27, 2010, which was six days prior to the Protest Hearing on June 2, 2010. Based on these facts, the Board granted the Motion to Dismiss by a vote of 4-1 with Member Mital Gandhi dissenting.

On June 2, 2010, the Applicant filed a Motion to Reconsider. The Applicant's Motion to Reconsider asks the Board to reinstate its Application. The Applicant argues that the Application was actually due on May 27, 2010, because the Memorial Day

holiday, which occurred between May 26, 2010, and the June 2, 2010, Protest Hearing, gave the Applicant another day to file. Furthermore, the Applicant argues that the Board's decision violates Title 5 of the Administrative Procedure Act. 5 USCS §§ 551 *et. seq.* (1994). Finally, the Applicant states that unnamed ABRA employee called the Applicant on May 27, 2010, and told the Applicant that he had to file the PIF that day. *Transcript., 10-PRO-00001, June 6, 2010*, at 7.

The Board is not persuaded by the Applicant's arguments and easily dispenses with them. The ABC Code states that when computing a period of time the Board will only disregard a legal holiday where it falls on the final day of the counting period. 23 DCMR § 102 (2004). As such, the Applicant's argument that the Board should give the Applicant another day to file its PIF because there was a legal holiday in between May 26, 2010, and June 2, 2010, is simply an erroneous reading of the law.

Furthermore, the Board notes that it is not bound by the Administrative Procedure Act, which specifically excludes the government of the District of Columbia. 5 USCS § 551(1)(D). The Board also notes that the District of Columbia Administrative Procedure Act is silent on the matter of computing time. *See* District of Columbia Administrative Procedure Act, D.C. Code § 2-501 *et. seq.* (1968).

Finally, even if true, it is irrelevant that an ABRA employee told the Applicant on May 27, 2010, that they had to file their PIF that day. Indeed, on May 27, 2010, the Applicant's PIF was already late because it was due on May 26, 2010. As a result, nothing said by the ABRA employee changes the fact that the Applicant missed the deadline to file their PIF with ABRA and failed to serve it on the other parties.

Therefore, upon consideration of the Applicant's Motion and the entire record of this matter, the Board, on this 23rd day of June, 2010, hereby **DENIES** Applicant's Motion.

Lastly, the Board notes that the Applicant has re-filed its Application with the Board. Based on the events surrounding the dismissal of the Applicant's previous Application, the Board determines that a Settlement Conference is unnecessary. However, the Status Hearing is required by law. Therefore, the Status Hearing and Protest Hearing shall be held as soon as reasonably possible after the expiration of the petition period, which is August 2, 2010 and the Roll Call Hearing, which is August 16, 2010 at 10:00 a.m. Thus, the Status Hearing is scheduled for August 18, 2010 at 9:30 a.m., and the Protest Hearing is scheduled for September 8, 2010 at 10:00 a.m.

It is so **ORDERED**.

District of Columbia
Alcoholic Beverage Control Board

Charles Brodsky, Chairperson

Mital M. Gandhi, Member

Nick Alberti, Member

Donald Brooks, Member

Calvin Nophlin, Member

Mike Silverstein, Member

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 the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

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 (April 2004) 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).