

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

Melles Hospitality Group, LLC)	Case Number:	N/A
t/a The Alibi Restaurant & Lounge)	License Number:	93491
)	Order Number:	2014-428
Application for a New)		
Retailer's Class CR License)		
)		
at premises)		
237 2nd Street, N.W.)		
Washington, D.C. 20001)		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Melles Hospitality Group, LLC, t/a t/a The Alibi Restaurant & Lounge,
Applicant

Camelia C. Mazard, of the firm Doyle, Barlow & Mazard PLLC, on behalf
of the Applicant

Charles C. Parsons, of the firm Charles C. Parsons & Associates,
Intervenor

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**ORDER DENYING MOTION TO INTERVENE, REJECTING SETTLEMENT OFFER,
AND SCHEDULING QUALIFICATIONS HEARING**

INTRODUCTION

The Alcoholic Beverage Control Board dismisses the Motion to Intervene filed by Charles Parsons. Separately, the Board also rejects the settlement offer submitted by Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge (hereinafter "Applicant" or "Alibi").

Therefore, if Alibi intends to proceed with the Application, the Board orders the Applicant to demonstrate its fitness for licensure at a Qualifications Hearing on Thursday, November 13, 2014 at 1:30 p.m.¹

BACKGROUND

The Alcoholic Beverage Control Board (Board) received an Application for a New Retailer's Class CR License (Application) from Alibi at premises 237 2nd Street, N.W., Washington, D.C. ABRA's records show that Alibi has applied for "405.1 status"; whereby, the licensee seeks approval of the license before obtaining a certificate of occupancy. *See generally* 23 DCMR § 405.1 (West Supp. 2014). The Alcoholic Beverage Regulation Administration (ABRA) published notice of the Application in the District of Columbia (D.C.) Register and complied with the notice requirements of D.C. Official Code § 25-421. 60/47 D.C. Reg. 4614695 (Nov. 1, 2013). A placard notifying the public was posted on November 1, 2013. *Id.* The Board held a Fact Finding Hearing regarding the Application on January 29, 2014.

On April 9, 2014, the Board issued a Notice Ordering Applicant to Demonstrate Fitness for Licensure Under § 25-301 (Notice) on the Alibi. Specifically, Count I alleges that Abraham Melles, Martin Scahill, and Hailemaryam Negash are unfit for licensure, because they permitted the consumption of alcohol on the premises in violation of D.C. Official Code § 25-102(d) on or about October 26, 2013, as well as on other occasions after August 2013. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, Board Order No. 2013-119 (D.C.A.B.C.B. Apr. 9, 2014). Count II alleges that Mr. Scahill is individually unfit for licensure for the following separate reasons: (1) the Application is a means to avoid the \$16,500 in delinquent fines owed by Arias, Inc. t/a My Brother's Place, (My Brother's Place) ABRA License Number 071593 before its cancellation in August 2013, and (2) Mr. Scahill prior actions demonstrate a lack of desire and ability to prevent underage drinking in compliance with the law. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, Board Order No. 2013-129, 1-2 (D.C.A.B.C.B. Apr. 23, 2014).

The Board further notes that the Application is subject to replacarding in accordance with Board Order No. 2014-067. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, Board Order No. 2014-067, 3 (D.C.A.B.C.B. Feb. 26, 2014)

Third Party Submissions and Motion

The Board received information from Charles Parsons (Intervenor), an abutting property owner, alleging that the applicant is in violation of the District of Columbia Construction Code and may have filed a falsified permit application with the District of Columbia Department of Consumer and Regulatory Affairs. The Board notes that Intervenor has not been given standing as a protestant at this time.

Specifically, the Intervenor, who also raises the same issues in a court action against the landlord and Applicant, alleges that Alibi or the landlord violated the following provisions of Title 12 of the D.C. Municipal Regulations: §§ 101.2.4, 105.1.4.2, 114.10, 114.11, 3307.1, and

¹ Additional instructions regarding the hearing are contained below.

3307.2. *Second Amended Complaint*, 6-8, 11-12; *Petition in Protest to the Application of Melles Hospitality Group*, 4, 6-7, 10. The Intervenor also alleges that the DCRA Electrical Permit E1406842 posted on the applicant's premises and issued in the name of Carlos A. Garcia of Clifton, Virginia may have been falsified by the applicant or the owner of the premises. *Supplemental Points and Authorities in Support of Petition in Protest to the Application of Melles Hospitality Group*, 2-3, Exhibit 1, Exhibit 2. He also argues that this is sufficient grounds to render the members of Alibi unfit for licensure under D.C. Official Code § 25-301. *Id.* at 4-5

Applicant's Reply

In brief, the Applicant argues that it is compliant with Title 12 and properly posted its placards. *Applicant's Resp.*, at 2.

Information Received from DCRA

The Board received information from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) and the Applicant regarding the Applicant's compliance with DCRA's regulations.² Specifically, according to DCRA the permit should not have listed Carlos Garcia as the electrician, but rather Alan Thompson; thus, the error appears to have been ministerial in nature. *Mot. to Dismiss with Prejudice*, Case No. 2014-DCRA-00058 (filed with the Office of Administrative Hearings). The Office of Administrative Hearings (OAH), on the motion of DCRA, formally dismissed the action related to this incident on September 4, 2014. *2nd Street Properties LLC v. D.C. Dep't of Consumer and Regulatory Affairs*, Case No. 2014-DCRA-00058, (O.A.H. Sept. 4, 2014).

DISPOSITION OF THIRD PARTY MOTIONS

The Board treats the submissions by Intervenor as a Motion to Intervene. The Board denies this motion, because it does not relate to the current matter before the Board.

Under § 1701.4, "[t]he Board may, in its discretion, permit interested persons other than parties, as defined in this chapter, to intervene in a proceeding for such general or limited purpose as the Board may specify." 23 DCMR § 1701.4 (West Supp. 2014).

Section 1701.4 does not permit intervention as a matter of right; but rather, only with the permission of the Board. This section does not provide guidance on how the Board should use its discretion. The Board is persuaded that Rule 24(b) provides sufficient guidance on how to address a discretionary motion to intervene. This rule states, "[u]pon timely application anyone may be permitted to intervene in an action: . . . when an applicant's claim or defense and the main action have a question of law or fact in common." Super. Ct. Civ. R. 24(b).

The Board notes that the claims raised by Intervenor are separate from the two counts raised by the Board in its Amended Notice. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, Board Order No. 2013-129, 1-2 (D.C.A.B.C.B. Apr. 23, 2014).

² DCRA only provided the Board with the decision by the Office of Administrative Hearings, while the Applicant provided the decision and a motion to dismiss filed by DCRA.

Specifically, the Amended Notice is based on allegations that Alibi permitted the consumption of alcohol on the premises; Mr. Scahill failed to pay required fines; and Mr. Scahill lacks the desire or ability to prevent underage drinking in compliance with the law. *Id.* The Board notes that the Intervenor raises alleged character and fitness issues, but these issues do not have a nexus to the matters raised by the Board. Consequently, the motion to intervene is unrelated and should be denied.

Nevertheless, the Board is cognizant of the fact that the Intervenor raises matters that question whether the premises are in compliance with the law. In this case, the Intervenor raises concerns that the premises do not satisfy Title 12 in accordance with D.C. Official Code § 25-335(1) and that the applicant or owner of the premises falsified a permit application presented to DCRA.

Section 25-335(1) states, “[n]otwithstanding any other provision of this title, the Board shall deny a license if the evidence reasonably shows that: . . . The establishment for which the license is sought is in violation of one or more of the Construction Codes for the District contained in Title 12 of the District of Columbia Municipal Regulations.” D.C. Official Code § 25-335, (1).

Yet, in *Dupont Circle Citizens Association*, the court instructed the Board that it cannot act “. . . as a court of appeals over other coordinate administrative departments.” *Dupont Circle Citizens Ass'n v. D.C. Alcoholic Beverage Control Bd.*, 766 A.2d 59, 62 (D.C. 2001). Consequently, when the Board is confronted with an alleged violation of statutes and regulations administered by another agency, it is advisable for the Board to rely on that agency’s final determination of any issues falling under the coordinate agency’s purview.

The Board does not administer Title 12 of the District of Columbia Municipal Regulations (Title 12); however, the Board cannot issue a license when an establishment is in violation of Title 12. In order to avoid creating a conflict between the Board, DCRA, and the OAH, the Board must defer to that agency’s determination as to whether Alibi is in compliance with Title 12.

In this case, DCRA has informed the Board that it has chosen not to pursue revocation of Alibi’s electrical permit and the Office of Administrative Hearings has dismissed the case. Consequently, based on this action, the Board must conclude that Alibi is compliant with all laws and regulations related to its electrical permit.

The Board further notes that the remaining allegations are currently being adjudicated by the Superior Court of the District of Columbia. As a result, out of comity to the Superior Court, the Board will not conduct parallel proceedings on these issues; however, this does not prevent the Board from relying on the conclusions made by the Superior Court should it issue a decision on the matter.

Finally, the Application is currently subject to a replacarding order under Board Order No. 2014-067; *Protest Charles C. Parson’s Motion for Replacarding of Application and Extension of Time in Which to Protest Application*, 1-8. *In re Melles Hospitality Group, LLC, t/a*

The Alibi Restaurant & Lounge, Board Order No. 2014-067, at 3. Therefore, the issue of whether the placards were properly posted is moot, because another protest period will be begin once the Licensing Division reposts the placards.

ORDER

Accordingly, the Board, on this 22nd day of October 2014, hereby **DENIES** the Motion to Intervene filed by Intervenor. The Board **ADVISES** Intervenor that nothing in this order prevents the filing of a formal protest once ABRA's Licensing Division replacards the Application.

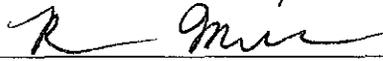
The Board further **ADVISES** Alibi that if DCRA, or a court, find violations of Title 12 at the premises, the Board may deny or stay issuance of the license. Furthermore, if issued, such a finding by DCRA or the court may result in an enforcement action, which could result in the possible suspension or revocation of the license, among other remedies.

IT IS FURTHER ORDERED that the settlement offer contained in the Alibi's letter, dated July 23, 2014, is hereby **DENIED**, because it does not resolve the qualifications issues raised by the Board or satisfy the public interest.

IT IS FURTHER ORDERED that Alibi shall appear before the Board on November 13, 2014, at 1:30 p.m. to demonstrate through substantial evidence that it qualifies for licensure as discussed in Board Order Nos. 2014-129 and 2014-119. Alibi is ordered to submit a list of witnesses and copies of all exhibits at least seven (7) days before the hearing. The Board will hear the Applicant's case-in-chief on November 13, 2014. The Board further reserves the right to schedule additional hearings for the purpose of calling the Board's own witnesses and hearing the Applicant's rebuttal evidence, should it be necessary.

ABRA shall serve a copy of this Order on Counsel for the Applicant and Charles Parsons.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



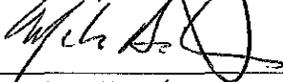
Nick Alberti, Member



Donald Brooks, Member



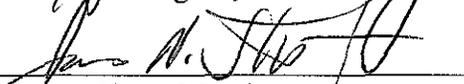
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Under 23 DCMR § 1719.1 (2008), 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, under 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 under 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).