

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

In the Matter of:

All Souls, LLC
t/a All Souls

Application for Substantial Change
(Change of Hours and Sidewalk Café)
Retailer's Class CT License

at premises
725 T Street, N.W.
Washington, D.C. 20001

Case No. 15-PRO-00063

License No. ABRA-088179

Order No. 2015-367

All Souls, LLC t/a All Souls (Applicant)

Andrew Kline, Esq. on behalf of All Souls, LLC t/a All Souls (Applicant)

Erica Hurtt, Abutting Property Owner

Stanley Meyes, Abutting Property Owner (Protestant)

A Group of Five or More Individuals (Protestant)

James Turner, Chairperson, Advisory Neighborhood Commission (ANC) 1B (Protestant)

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

**ORDER DENYING ERICA HURTT'S REQUEST
FOR REINSTATEMENT OF PROTEST**

The Application filed by All Souls, LLC t/a All Souls, for a substantial change to its Retailer's Class CT License, having been timely protested, came before the Alcoholic Beverage

Control Board (Board) for a Roll Call Hearing on June 29, 2015, in accordance with D.C. Official Code § 25-601 (2015). At the Roll Call Hearing, the Board's Agent granted standing to Abutting Property Owner, Stanley Mayes, and Advisory Neighborhood Commission (ANC) 1B. The Board's Agent also granted conditional standing to the Protestant Group of Seven Individuals, requiring that two more individuals appear at the Protest Status Hearing to maintain standing.

On June 29, 2015, the Board dismissed the Protest of Erica Hurtt, Abutting Property Owner, because Ms. Hurtt failed to appear at the Roll Call Hearing. *See All Souls, LLC t/a All Souls*, Case No.: 15-PRO-00063, Board Order No. 2015-333 (D.C.A.B.C.B. July 8, 2015). The Protestants' attendance at the Roll Call Hearing is required under 23 DCMR § 1603.3.

On July 10, 2015, Ms. Hurtt requested Reinstatement. *ABRA Protest File 15-PRO-00063, Request for Reinstatement* dated July 10, 2015. In her request, Ms. Hurtt stated, "given extensive business and personal travel in the month of June," she did not receive the Official Roll Call Hearing notice until after it occurred. *Id.*

In response to Ms. Hurtt's request, the Applicant filed an Opposition to Motion for Reconsideration of the Order Dismissing Erica Hurtt's Protest on July 21, 2015. *ABRA Protest File 15-PRO-00063, Opposition to Motion [Opp.]* dated July 21, 2015. The Applicant argued that Ms. Hurtt failed to demonstrate good cause for her failure to appear at the Roll Call Hearing as set forth in 23 DCMR § 1602.3. *Id.* The Applicant further argued that reinstating Ms. Hurtt's protest would unfairly prejudice the Applicant who appeared at the hearing. *Id.* The Applicant also points to the Notice of Public Hearing, posted on May 1, 2015, which states that the Roll Call Hearing is scheduled for June 29, 2015. *Opp.*, See Exhibit 1.

As set forth in 23 DCMR § 1602.3, the failure to appear in person or through a designated representative at the Roll Call Hearing may result in denial of the license application or dismissal of a protest, unless, in the discretion of the Board, good cause is shown. 23 DCMR § 1602.3. Under 23 DCMR § 1601.7, the Board shall consider whether, in its discretion, the party has shown good cause for his or her failure to appear at Board hearings. 23 DCMR § 1601.7. Examples of good cause for failure to appear include, but are not limited to: sudden, severe illness or accident; death or sudden illness in the immediate family such as spouse, partner children, parents, siblings; incarceration; or severe inclement weather. 23 DCMR § 1601.6.

In this matter, the Board, in its discretion, does not find that Ms. Hurtt's reason for failing to attend the Roll Call Hearing constitutes good cause. First, the Board does not find Ms. Hurtt's argument that she did not receive notice of the Roll Call Hearing to be credible. Rather, the Board credits the Applicant's argument that extensive travel during the month of the posted hearing date does not rise to the standard of good cause as defined in 23 DCMR § 1601.6.

In addition to the notice of the hearing posting on May 1, 2015, Ms. Hurtt timely filed a protest of the Application on June 11, 2015. *ABRA Protest File 15-PRO-00063, Protest Letter*, dated June 11, 2015. The Board finds it inconceivable that a member of the public would receive notice of the petition filing deadline but not receive notice of the Roll Call Hearing date, which is clearly listed on the same notice. *ABRA Protest File 15-PRO-00063, Notice of Public Hearing*.

Moreover, as noted by the Applicant in its Opposition, if Ms. Hurtt's travel plans prevented her from attending the Roll Call Hearing, she could have designated a representative on her behalf, but failed to do so. *Opp.* The Board finds that Ms. Hurtt received actual notice by the Roll Call Hearing official notice in addition to constructive notice by accessing the Notice of Public Hearing. Therefore, Ms. Hurtt had ample time to designate someone to appear on her behalf prior to departing for her travel, but did not do so in this instance. For these reasons, the Board denies Ms. Hurtt's Request for Reinstatement.

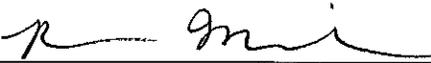
The Board adopts the determination of the Board's Agent at the Roll Call Hearing.

ORDER

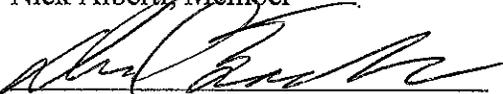
The Board does hereby, this 29th day of July, 2015, **DENIES** Ms. Hurtt's Request for Reinstatement. The Board also adopts the finding and recommendations of its Agent at the Roll Call Hearing.

Copies of this Order shall be sent to the Applicant, Ms. Hurtt, Mr. Mayes, and ANC 1B.

District of Columbia
Alcoholic Beverage Control Board

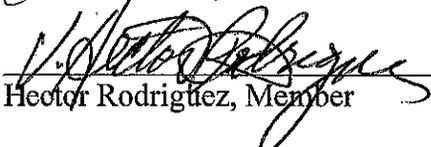

Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member

Herman Jones, Member


Mike Silverstein, Member


Hector Rodriguez, Member

James Short, Member

Pursuant to 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, 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, 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).