

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

In the Matter of:

TM Liquors
t/a Big Ben Liquors

Application for Renewal of
Retailer's Class A License

at premises
1300 North Capitol Street, NW
Washington, D.C. 20011

Case No. 15-PRO-00054
License No. ABRA-060652
Order No. 2015-394

TM Liquors, Inc. t/a Big Ben Liquors (Applicant)

Bradley Thomas, Commissioner, Advisory Neighborhood Commission (ANC) 5E (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 PROTESTANT'S REQUEST FOR
REINSTATEMENT OF PROTEST**

The Application filed by TM Liquors, Inc. t/a Big Ben Liquors, for renewal of its Retailer's Class A License, having been timely protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on June 15, 2015, and a Protest Status Hearing on July 29, 2015, in accordance with D.C. Official Code § 25-601 (2015).

On July 29, 2015, the Board dismissed the Protest of ANC 5E because the ANC failed to appear at the Protest Status Hearing. *See TM Liquors, Inc. t/a Big Ben Liquors*, Case No.: 15-PRO-00054, Board Order No. 2015-374 (D.C.A.B.C.B. July 29, 2015). The ANC's attendance at the Protest Status Hearing is required under 23 DCMR § 1603.3.

On July 29, 2015, the ANC requested Reinstatement of the Protest. *ABRA Protest File 15-PRO-00054, ANC's Request for Reinstatement of Protest [ANC Request]* dated July 30, 2015. In its request, the ANC stated that Commissioner Thomas appeared before the Board's Agent at the Roll Call Hearing on June 15, 2015, but the protest hearing dates were set at a later time. *Id.* at 1. In addition, the ANC cited that ANC 5E Chairperson Teri Janine Quinn attended the Mediation, on July 10, 2015 as Commissioner Thomas's designated representative. *Id.* The ANC cited the failure to receive written notice as its reason for failing to appear at the Protest Status Hearing on July 29, 2015. *Id.* at 2.

On August 6, 2015, the Applicant filed an Opposition to the ANC's Request for Reinstatement of Protest. In its motion, the Applicant argues that the ANC's Request should be denied for the failure to state good cause for its failure to attend the Protest Status Hearing. *ABRA Protest File 15-PRO-00054, Applicant's Opposition to ANC's Request for Reinstatement of Protest [Opp.]* dated July 30, 2015.

As set forth in 23 DCMR § 1603.3, the failure to appear in person or through a designated representative at the Protest Status 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 the ANC's reason for failing to attend the Protest Status Hearing constitutes good cause. First, the Board does not find the ANC's argument that it did not receive notice of the Protest Status Hearing to be credible. The Board takes administrative notice of Alcoholic Beverage Regulation Administration (ABRA) records which indicate that the Official Hearing Notice (Notice) was mailed electronically both to the email address of record of Commissioner Thomas and the Applicant on June 26, 2015. *ABRA Protest File 15-PRO-00054, Official Hearing Notice.* The Applicant acknowledges the receipt of this email and additional correspondence on this email thread in its Opposition. *Opp.* at 1. This Notice was not returned for failure of delivery and was sent to the email address that Commissioner Thomas has engaged in correspondence with ABRA throughout these protest proceedings.

In addition, the Board notes that it does not find the argument that the ANC did not receive a copy of the Protest Status Hearing date to be credible. The Official Hearing Notice lists the dates of the Mediation, Protest Status Hearing, and Protest Hearing at the top of the form in bolded text. *ABRA Protest File 15-PRO-00054, Official Hearing Notice.* The ANC acknowledged in its Motion that it designated Chairperson Teri Janine Quinn to appear on Commissioner Thomas's behalf at the Mediation on July 10, 2015. *ANC Request* at 1. The Board finds it inconceivable that a Protestant would receive the date of the Mediation but not

receive notice of the subsequent Hearing dates which are clearly listed on the same notice. *ABRA Protest File 15-PRO-00054, Official Hearing Notice.*

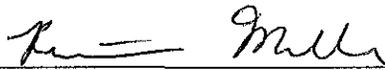
Moreover, just as easily as Commissioner Thomas was able to designate a representative to appear at the Mediation, he could have done the same for the Protest Status Hearing, but failed to do so. Thus, the Board does not find that the ANC's argument that it did not receive written notice constitutes good cause. For these reasons, the Board denies the ANC's Request for Reinstatement of Protest.

ORDER

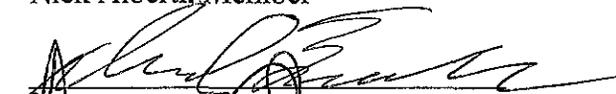
The Board does hereby, this 12th day of August, 2015, **DENIES** the Request for Reinstatement of Protest filed by the ANC.

Copies of this Order shall be sent to the Applicant and ANC 5E.

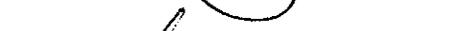
District of Columbia
Alcoholic Beverage Control Board

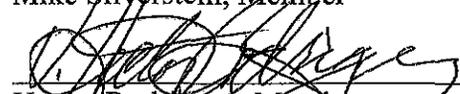

Ruthanne Miller, Chairperson


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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).