

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

In the Matter of:)	
)	
1624 U Street, Inc.)	Case Number: 10-PRO-00156
t/a Chi-Cha Lounge)	License Number: 026519
)	Order: 2011-120
Petition to Renew a)	
Retailer's Class CT License)	
)	
at premises)	
1624 U Street, N.W.)	
Washington, D.C. 20009)	

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

ORDER DENYING APPLICANT'S MOTION TO DISMISS

A Petition to Renew a Retailer's Class CT License (Application) was filed by 1624 U Street, Inc., t/a Chi-Cha Lounge (Applicant), at premises 1624 U Street, N.W., Washington, D.C. The Application was protested by Joseph Masullo, an abutting property owner (Protestant). The Application came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 29, 2010, and a Status Hearing on January 2, 2011, in accordance with D.C. Official Code § 25-601 (2001). The Protest Hearing is set for February 23, 2011, at 4:00 p.m.

The Applicant filed a Motion to Dismiss the protest on January 21, 2011, and served the Protestant by mail. Ten days later, on January 31, 2011, the Protestant replied to the Motion to Dismiss. On January 31, 2011, the Applicant provided a written response to the Protestant's reply.

The Applicant argues that the Protestant has not stated a valid ground to protest the Application. Furthermore, the Applicant states that the Protestant's response is untimely and should be dismissed.

The Board finds that the Protestant has stated an appropriate ground to protest the Application and submitted a reply in a timely fashion.

In order to file a protest, a Protestant must “state, as grounds for the protest, why the matter being objected to is inappropriate under one (1) or more of the appropriateness standards set out in [the] D.C. Official Code.” 23 DCMR § 1605.2 (2008) Section 25-313(b) states that the Board “shall consider all relevant evidence of record, including . . . the effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726.” D.C. Code § 25-313(b)-(b)(3) (2001). In the Board’s view, so long as facts related to one of the appropriateness grounds is present in the protest letter, a Protestant’s letter of protest is sufficient to satisfy § 1605.2.

The Protestant’s letter of protest states that “[t]he primary ground for [his] protest has to do with noise from licensed premises. . . that. . . may be heard in [his] premises on a nightly basis.” The Protestants further adds that “the music is of such intensity that [he] can clearly hear song lyrics of music being played by the Chi Cha Lounge” and states that the Applicant “has a long history of violating its voluntary agreement dated February 24, 2006, which was related to noise.” Clearly, the protest letter puts both the Board and the Applicant on notice that the Applicant intends to protest the Application on the grounds of peace, order, and quiet, which includes noise. As such, the Board finds that the Protestant’s letter of protest is sufficient under § 1605.2.

Finally, the Board finds that the Protestant filed its reply to the Motion to Dismiss in a timely manner. Normally, parties have seven days to reply to another party’s motion. 23 DCMR 1716.2 (2008). However, the regulations state that:

Whenever a party to a proceeding under this chapter has the right or is required to perform some act within a specified time period after the service of notice upon the party, and the notice is served upon that party by mail, three (3) days shall be added to the prescribed period. 23 DCMR § 1702.1 (2008).

As a result, the Protestant had 10 days to file a reply because the Applicant served the Protestant by mail. Consequently, the Protestant was entitled to file its reply on January 31, 2011.

ORDER

The Board does hereby, this 9th day of February 2011, **DENY** the Motion to Dismiss submitted by the Applicant. Copies of this Order shall be delivered to the Applicant and the Protestant.

District of Columbia
Alcoholic Beverage Control Board

Charles Brodsky, Chairperson



Mital M. Gandhi, Member

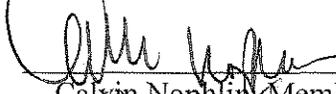


Nick Alberti, Member

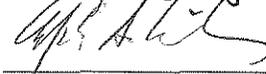


Donald Brooks, Member

Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, 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, 1250 U Street, N.W., 3rd Floor, 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. 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) (2004).