

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

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In the Matter of: )	
) )	
JVLHC, LLC )	License No.: 076330
t/a Jimmy Valentine's Lonely Hearts Club )	Case No.: 11-PRO-00066
) )	Order No.: 2012-015
Application to Renew a )	
Retailer's Class CT License )	
at premises )	
1103 Bladensburg Road, N.E. )	
Washington, D.C. 20002 )	
_____ )	

BEFORE:            Nick Alberti, Interim Chairperson  
                     Donald Brooks, Member  
                     Herman Jones, Member  
                     Calvin Nophlin, Member  
                     Mike Silverstein, Member

ALSO PRESENT:    JVLHC, LLC, t/a Jimmy Valentine's Lonely Hearts Club, Applicant  
  
                     Matthew LeFande, on behalf of the Applicant  
  
                     Kathy Henderson, on behalf of a Group of Five or More Individuals,  
                     Protestant  
  
                     India Henderson, Commissioner, Advisory Neighborhood  
                     Commission (ANC) 5B, Protestant  
  
                     Martha Jenkins, General Counsel  
                     Alcoholic Beverage Regulation Administration

**ORDER DENYING APPLICANT'S MOTION FOR RECONSIDERATION**

On April 26, 2011, JVLHC, LLC, t/a Jimmy Valentine's Lonely Hearts Club, (Applicant) filed an Application to renew its Retailer's Class CT License (Application). On April 29, 2011, the Alcoholic Beverage Regulation Administration (ABRA) published notice of the Application in the District of Columbia Register. See 58 D.C. Reg. 1034037 (Apr. 29, 2011). The Applicant came before the Alcoholic Beverage Control Board (Board) for an uncontested Roll Call Hearing on June 27, 2011.

Subsequently, in a letter, dated August 31, 2011, Commissioner India A. Henderson, who serves on Advisory Neighborhood Commission (ANC) 5B, requested that the Board re-placard the establishment. According to her letter, ANC 5B never received notice of the Application under District of Columbia Official Code § 25-421(e). *Letter from Commissioner India A. Henderson, ANC 5B, to Interim Chairperson Nick Alberti, Alcoholic Beverage Control Board* (Aug. 31, 2011). Based on our investigation of ABRA's records, we determined that ABRA's Licensing Division failed to mail the required forms in accordance with § 25-421(e) to ANC 5B.

In light of this finding, on September 21, 2011, we granted Commissioner Henderson's request and ordered ABRA to re-placard the establishment, which occurred on September 30, 2011. On November 14, 2011, the Group of Five or More Individuals (Protestants), represented by Kathy Henderson and Commissioner Henderson, submitted a protest against the Application. *Letter from Commissioner India A. Henderson, ANC 5B, to Interim Chairperson Nick Alberti, Alcoholic Beverage Control Board* (Nov. 14, 2011).

The Applicant, subsequently, filed a Motion to Dismiss Untimely Protest (Motion) requesting that the Board overturn its decision to re-placard the establishment and dismiss the Protestants. The Applicant argues that the Board should overturn its prior decision, because Commissioner Henderson had actual notice of the Application. The Applicant further argues that the Protestants failed to serve it with their re-placard request; thus, the Applicant did not have notice and an opportunity to respond. *Motion to Dismiss Untimely Protest*, 5. We disagree.

It is incontrovertible that ABRA failed to provide proper notice to ANC 5B, because all members of ANC 5B did not receive notice as required under § 25-421(e).

Under the law,

(e) The Board shall give notice to the ANC by first-class mail, postmarked not more than 7 days after the date of submission, and addressed to the following persons:

- (1) *The ANC office*, with a copy for each ANC member;
- (2) *The ANC chairperson*, at his or her home address of record; and
- (3) *The ANC member* in whose single-member district the establishment is or will be located, at his or her home address of record.

D.C. Code § 25-421(e) (West Supp. 2011) (emphasis added). The notice requirement may also be satisfied if the ANC has actual notice of the Application. Kopff v. District of Columbia Alcoholic Beverage Control Bd., 381 A.2d 1372, 1382 (D.C. 1977).

In Kopff, the District of Columbia Court of Appeals held that actual notice could cure a defect in any specific notice requirements provided by Title 25 of the District of Columbia Official Code. Id. According to the court, "[t]he requirements of procedural due process are met if . . . a complainant was given an adequate opportunity to prepare and present its position . . . and that no prejudice resulted from the originally deficient notice. Id. (citation omitted).

The Applicant's argument ignores that fact that § 25-421(e) requires that every member of ANC 5B and ANC 5B's chairperson receive notice of the Application, not just a single commissioner. As such, unlike Kopff, even if Commissioner Henderson had actual notice of the Application, this does not cure the defect in notice, because the rest of ANC 5B did not have actual notice of the Application. Furthermore, we conclude that the failure to mail the required notice to ANC 5B and its chairperson deprived the ANC of the ability to adequately prepare and present its position; thus, we find that ANC 5B was prejudiced by the Board's failure to provide notice.

In addition, we reject the Applicant's argument that publication in the District of Columbia Register cures the defect in notice to the ANC. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Constructive notice, such as publishing notice in the District of Columbia Register, should only be relied upon when "the serving party has been unable to effectuate personal service despite diligent efforts to do so." In re N.N.N., 985 A.2d 1113, 1123 (D.C. 2009). As a result, we cannot lightly disregard the personal service requirement contained in § 25-421(e); especially, when the whereabouts of ANC 5B are well known.

We also note that the Protestants' failure to serve the Applicant is not fatal to the Protestants' original Motion requesting re-placarding. Under the regulations, the "Failure to serve all parties of record . . . may result in the Board delaying action on the matter at issue until such time as service is properly rendered." 23 DCMR § 1703.8 (2008). Here, permitting the Applicant to respond to the Protestants' request satisfies any remaining due process concerns raised by the Applicant.

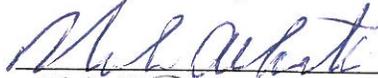
Finally, even without the request from Commissioner Henderson, the Board would have been obligated to re-placard the establishment anyway. The law requires that "Upon the receipt of an application for . . . renewal . . . the Board shall give notice of the application to . . . [a]ny ANC within 600 feet of where the establishment is or will be located." D.C. Code § 25-421(a)(1)-(4) (West Supp. 2011). Consequently, by failing to provide notice to ANC 5B, the Board failed to meet a threshold legal requirement for ruling affirmatively on the Application.

For the foregoing reasons, the Board denies the Motion.

### ORDER

Based on the foregoing, the Board, on this 11th day of January 2011, **DENIES** the Motion to Dismiss Untimely Protest filed by JVLHC, LLC, t/a Jimmy Valentine's Lonely Hearts Club. ABRA shall send copies of this Order to the Applicant and the Protestants.

District of Columbia  
Alcoholic Beverage Control Board



Nick Alberti, Interim Chairperson



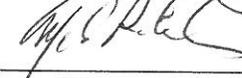
Donald Brooks, Member



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, Reeves Center, 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, 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).