

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

In the Matter of:

KYS, Inc.
t/a Kovaks Liquors

)
)
) License No.: 076573
) Case No.: 15-PRO-00051
) Board Order No.: 2015-508
)

Motion to Vacate Settlement Agreement

)
)
) at premises
) 1237 Mount Olivet Rd., N.E.
) Washington, D.C. 20002
)
)

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

PARTIES: KYS, Inc., t/a Kovaks Liquors

Kathy Henderson, Chairperson, on behalf of Advisory
Neighborhood Commission (ANC) 5D

Keisha Shrophshire, Commissioner, on behalf of ANC 5D

ORDER DENYING MOTION TO VACATE

In a letter, dated October 13, 2015, the Chairperson of Advisory Neighborhood Commission (ANC) 5D asks the Alcoholic Beverage Control Board (Board) to vacate its previous approval of the settlement agreement entered into between ANC 5D and KYS, Inc., t/a Kovaks Liquors. *Letter from Kathy Henderson, Chairperson, ANC 5D to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board, 1 (Oct. 13, 2015) [Chair Mot.]; In re KYS, Inc., t/a Kovaks Liquors, Case No. 15-PRO-00051, Board Order NO. 2015-429, 1-2 (D.C.A.B.C.B. Sept. 16, 2015).* Specifically, the Chair asserts that Commissioner Keisha Shrophshire was not authorized to represent the ANC and that the settlement agreement is invalid. *Chair Mot., 1-2.* Both the licensee and Commissioner Shrophshire object to the motion in responses filed with the Board.

Under the administrative procedures promulgated by the District of Columbia, the Chairperson has the burden of demonstrating that the settlement agreement is invalid.

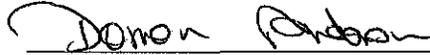
D.C. Official Code § 2-509 (“the proponent of a rule or order shall have the burden of proof”).

Commissioner Shropshire filed a resolution issued by ANC 5D on May 22, 2015 appointing her the ANC’s designated representative. *ANC 5D Resolution, “Re: ABRA 076573 Kovaks Liquors, 1237 Mount Olivet Rd NE, Renewal of Class ‘A’ Liquor License”* (filed with ABRA on July 8, 2015). The Commissioner further provided the Board with evidence that the May 22, 2015 meeting was properly noticed in accordance with the law. *Rebuttal*, at 1. Also, after reviewing ANC 5D’s bylaws, the Chairperson has not shown that ANC 5D’s actions violated the ANC’s procedures in any manner. Consequently, because ANC 5D’s actions appear appropriate on their face and the evidence cited by the Chair is not supported by the facts, the Board has no grounds to permit ANC 5D to terminate the settlement agreement.

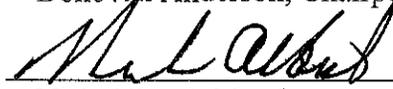
ORDER

Therefore, on this 4th day of November 2015, the Board **DENIES** the motion filed by the Chair of ANC 5D. A copy of this Order shall be delivered to the parties.

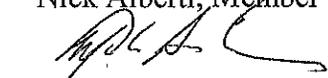
District of Columbia
Alcoholic Beverage Control Board



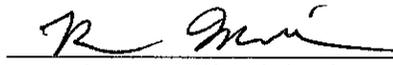
Donovan Anderson, Chairperson



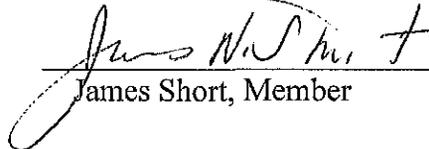
Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

Pursuant to 23 DCMR § 1719.1, 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, N.W., 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, District of Columbia 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 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).