

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

In the Matter of:)
)
KYS, Inc.) License No.: 076573
t/a Kovaks Liquors) Case No.: 15-PRO-00051
) Board Order No.: 2015-580
)
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, Applicant

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

Keisha Shropshire, Commissioner, on behalf of ANC 5D

ORDER DENYING MOTION FOR RECONSIDERATION

In Board Order No. 2015-508, the Alcoholic Beverage Control Board denied Advisory Neighborhood Commission (ANC) 5D Chairperson Kathy Henderson's motion to vacate the Settlement Agreement entered into between ANC 5D and KYS, Inc., t/a Kovaks Liquors (Kovaks). *In re KYS, Inc., t/a Kovaks Liquors*, Case No. 15-PRO-00051, Board Order No. 2015-508, 1-2 (D.C.A.B.C.B. Nov. 4, 2015). The Board upheld the Settlement Agreement, because Chairperson Henderson could not show that the agreement was invalid when, among other reasons, the record showed that the ANC passed a resolution authorizing Commissioner Shropshire to represent the ANC and the meeting was properly noticed. *Id.*

Chairperson Henderson filed a motion for reconsideration objecting to the Board's decision, which was opposed by the ANC's designated representative Commissioner Shropshire. No response was filed by the Applicant.

Among other arguments, Chairperson Henderson claims that the May 22, 2015 meeting authorizing Commissioner Shropshire's designation as the ANC's representative was not properly noticed based on the placement of a meeting notice in one location in violation of the ANC law. *Mot. for Recon.*, 1.

The law states in § 1-309(c) that

- (c) Each Commission shall give notice of all meetings or convocations to each Commissioner, individuals with official business before the Commission, and residents of the Commission area no less than 7 days prior to the date of such meeting. Shorter notice may be given in the case of an emergency or for other good cause. Notice of regular and emergency meetings must include, but is not limited to, at least 2 of the following:
 - (1) Posting written notices in at least 4 conspicuous places in each single-member district within the Commission area;
 - (2) Publication in a city or community newspaper;
 - (3) Transmitting or distributing notice to a list of residents and other stakeholders in the community; and
 - (4) In any other manner approved by the Commission.

D.C. Official Code § 1-309.11(c)(1)-(4).

In reply, Commissioner Shropshire indicates that ANC 5D complied with the notice requirements of § 1-309. *Reply*, at 1. As part of her response, Commissioner Shropshire submitted photographs showing conspicuously posted meeting notices in that were posted in four locations in each Single Member District on May 15, 2015. *Reply*, at 1, Photographs. Therefore, Commissioner Henderson's arguments related to propriety of the May 22, 2015 meeting are baseless and without merit.

In light of this conclusion, the May 22, 2015 resolution designating Commissioner Shropshire as the ANC's designated representative is valid. Therefore, the motion filed by Chairperson Henderson must also be denied, because she lacks standing as a single commissioner to represent the ANC in this matter, or otherwise challenge the agreement entered into by the licensee and ANC 5D as an entity. *See Raines v. Byrd*, 521 U.S. 811, 829 n. 10, 830 (1997) (holding that individual members of Congress could demonstrate a sufficient "injury" to establish legal "standing") *citing United States v. Ballin*, 144 U.S. 1, 7 (1892) (explaining that the power of Congress "is not vested in any one individual" member, but rather the body as a whole).

On a final note, the Board recognizes that Chairperson Henderson's motion contained additional argument; however, the Board finds that these additional allegations are not relevant to the question of whether the Settlement Agreement is valid, and do not require a response by the Board.

ORDER

Therefore, on this 9th day of December 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



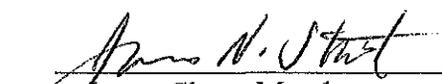
Nick Alberti, Member



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).