

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

In the Matter of:)	
)	
The Berliner Group, LLC)	License Number: 085260
t/a Lapis)	Case Number: 10-PRO-00129
)	Order Number: 2010-601
Application for a New)	
Retailer's Class CR License)	
at premises)	
1032 Wisconsin Avenue, N.W.)	
Washington, D.C. 20007)	

BEFORE: Nick Alberti, Acting Chairperson
 Mital Gandhi, Member
 Donald Brooks, Member
 Herman Jones, Member
 Calvin Nophlin, Member
 Mike Silverstein, Member

**ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER DENYING
MOTION TO RE-PLACARD NOTICE OF APPLICATION**

The Application for a new Retailer's Class CR License (Application) filed by The Berliner Group, LLC, t/a Lapis, (Applicant) at premises 1032 Wisconsin Avenue, N.W., Washington, D.C., was protested by ANC 2E, represented by Chairperson Ron Lewis, Commissioner Bill Starrels, and Commissioner Tom Birch. The application was also protested by Judi Cochran, as an abutting property owner.

The matter came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on October 18, 2010. Ms. Cochran's protest was dismissed at the Roll Call Hearing because it was determined that she was not, in fact, an abutting property owner and, thus, did not have standing to protest the Application. The Status Hearing was held on November 11, 2010, and Mediation was held on October 26, 2010. The Applicant and ANC 2E entered into a Voluntary Agreement, which was approved by the Board on December 8, 2010. *See Board Order No. 2010-594.* In addition, ANC 2E withdrew its protest, which eliminates the need for the Protest Hearing scheduled for January 12, 2010.

The Applicant submitted its Application on July 28, 2010. The Notice of Application was posted on August 20, 2010, and the Petition Deadline was October 4, 2010. Nevertheless, in a letter to the Board, dated November 16, 2010, Brooks Bowers

Asia (BBA) alleged that the Applicant did not comply with the notice requirements of D.C. Code § 25-423 (2001). The Applicant filed a Response on November 24, 2010.

The Board denied the BBA's motion because it determined that the notice was posted conspicuously, that the Applicant had satisfied all of the other notice requirements and it was in the best interest of the parties to proceed. *Board Order No. 2010-572, 2*. BBA filed a Motion for Reconsideration on November 30, 2010, and the Applicant filed a Response with the Board on December 7, 2010.

Based on the Board's findings, BBA's objections are irrelevant and amount to harmless error, even if correct. Despite BBA's arguments, the Board denies BBA's Motion for Reconsideration because BBA's complaints are flagrantly untimely and re-placarding is not in the best interest of the parties when all other notice requirements were met under the ABC laws. Therefore, the Board did not abuse its discretion by denying BBA's Motion to Re-Placard the Applicant's establishment.

The law requires applicants to post notice of an application for a liquor license "in conspicuous places on the outside of the establishment for the duration of the protest period." D.C. Code § 25-423. The law further states that:

If the Board determines that the notices posted at an applicant's establishment have not remained visible to the public for a full 45 days, the Board shall require the reposting of the notices and shall reschedule the administrative review for a date at least 45 days after the originally scheduled review, *unless the applicant has fully performed all other notice requirements and the Board determines that it is in the best interests, of the parties to proceed at an earlier date.* D.C. Code § 25-423(e) (emphasis added).

BBA admits that it had notice of the pending Application on October 4, 2010, yet chose not to notify the Board of its concerns until November 16, 2010. The Board further notes that having read the notice, BBA was fully aware that the Roll Call Hearing was on October 18, 2010. As a result, the Board is stunned that BBA waited for such an extraordinary length of time before filing its objection to the proceedings when it knew that the proceedings were occurring as BBA waited. As such, the Board agrees with the Applicant that BBA "cannot sleep on [its] rights" and the "unreasonable delay in bringing [the] action defeats it." *Watwood v. Yambrusic*, 389 A.2d 1362, 1363 (D.C. 1978). As such, given BBA's unconscionable delay, the Board finds that any equity in its favor has long dissipated with the passage of time.

Finally, the Board notes that because all of the other notice requirements were met and it is in the best interests of the parties to proceed at an earlier date, the Board will not re-placard the establishment.

Having concluded that the notice requirements were met, the Board stands by its previous decision finding that requiring the Applicant to re-placard is not in the best interest of the parties. As emphasized in Board Order No. 2010-572, BBA's

unconscionable delay, is highly prejudicial to both the Applicant and ANC 2E, both of whom have invested significant time, effort, and resources into the process. Consequently, the Board sees no reason to reverse its previous decision.

Therefore, upon consideration of the BBA's Motion for Reconsideration of Order Denying Motion to Re-Placard Notice of Application, the Board, on this 8th day of December 2010, hereby **DENIES** BBA's Motion for Reconsideration.

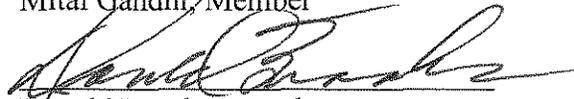
District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Acting Chairperson



Mital Gandhi, Member

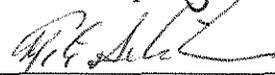


Donald Brooks, Member

Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

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 (April 2004) 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).