

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

In the Matter of:	)	
	)	
Pulse Nightclub, LLC	)	License No.: 94074
t/a Pulse Nightclub	)	Case No.: 14-PRO-00021
	)	Order No.: 2014-131
Application for a New	)	
Retailer's Class CN License	)	
at premises	)	
2142 Queens Chapel Road, N.E.	)	
Washington, D.C. 20020	)	

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member  
Hector Rodriguez, Member  
James Short, Member

**ALSO PRESENT:** Pulse Nightclub, LLC, t/a Pulse Nightclub, Applicant

Emanuel N. Mpras, of the Mpras Law Offices, on behalf of the Applicant

Karla Butler, on behalf of Advisory Neighborhood Commission (ANC)  
5C, Protestant

Yolanda Odunsi, on behalf of a Group of Five or More Residents or  
Property Owners (Odunsi Group), Protestant

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**ORDER GRANTING-IN-PART AND DENYING-IN-PART PULSE'S MOTION TO  
DISMISS**

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## INTRODUCTION

This matter comes before the Alcoholic Beverage Control Board (Board) on the Application for a New Retailer's Class CN License (Application) filed by Pulse Nightclub, LLC, t/a Pulse Nightclub (hereinafter "Applicant" or "Pulse"). Notice of the Application was published in the District of Columbia (D.C.) Register on January 24, 2014. *ABRA Protest File No. 14-PRO-00021*, Notice of Public Hearing.

During the protest period, ANC 5C voted to protest the Application on February 19, 2014 and submitted a resolution to ABRA designating Commissioner Karla Butler as the commission's designated representative. *ABRA Protest File No. 14-PRO-00021*, ANC 5C Resolution, 2 (Feb. 19, 2014). In addition, a group of fifty residents and property owners (Odunsi Group) submitted a petition protesting the Application. *ABRA Protest File No. 14-PRO-00021*, Opposition to Alcohol License Application for Pulse Nightclub.

The Board's Agent convened a Roll Call Hearing on March 24, 2014. During the hearing, Pulse challenged the standing of both ANC 5C and the Odunsi Group. The Board's Agent granted standing to both parties over the objection of the Pulse. Subsequently, Pulse submitted a formal Motion to Dismiss for consideration by the Board, to which neither ANC 5C or the Odunsi Group responded.

Based on the Motion filed by Pulse, the Board makes the following findings of fact and conclusions of law:

## FINDINGS OF FACT

1. ANC 5C designated Commissioner Karla Butler as the commission's designated representative on February 19, 2014. ANC 5C Resolution, 2. Commissioner Butler did not appear at the Roll Call Hearing on March 24, 2014. Letter from Commissioner Karla Butler, ANC 5C02, to Ruthanne Miller, Chair, Alcoholic Beverage Control (ABC) Board (Mar. 24, 2014). On the day of the hearing, Commissioner Butler wrote a letter to the Board indicating that she was designating Yolanda Odunsi, a person with no connection to the commission, to act as the commission's designated representative while she was "out of town due to the passing of [her] father." Id.
2. In response to a question from Pulse's counsel, Jacqueline Manning, the Chair of ANC 5C, wrote an email stating,

The Commission would never designate[] [a] layperson to represent [t]he Commission . . . It has not been approved by the Commission to have a layperson [represent the Commission.] No Commissioner has authority to transfer authority unless it has been approved by the Commission.

Email from Jacqueline Manning, Chair, ANC 5C, to Emanuel Mpras, Mpras Law Offices (March 31, 2014).

3. Similar to ANC 5C, the Odunsi Group designated Karla Butler to act as the group's designated representative. Opposition to Alcohol License Application for Pulse Nightclub, 3. Commissioner Butler did not appear; however, the following signatories personally appeared at the hearing: Yolanda Odunsi, Carlos Davis, Frances Penn, Evelyn Fraser, Camila Faulkner, and Mal Gwinn. *Transcript (Tr.)*, March 24, 2014 at 9-11.

4. Leslie Satchell, Janay Austin-Carlson, and Katherine Ford also appeared at the Roll Call Hearing. *Id.* Nevertheless, they did not sign the protest petition filed by the Odunsi Group. Opposition to Alcohol License Application for Pulse Nightclub, 1-3.

### CONCLUSIONS OF LAW

5. The standing of a party to file a protest is a threshold issue under Title 25 of the D.C. Official Code (Title 25) that the Board must address before the protest proceeds. Under § 25-601, an ANC and a group of five or more residents and property owners may file a protest against a new application. D.C. Official Code § 25-601(2), (4). As a result, contrary to the arguments raised in Pulse's Motion, the current question before the Board is not a standing question—as both ANCs and groups have standing under § 25-601—but rather a question of whether the protestants properly appeared at the Roll Call Hearing on March 24, 2014.

6. Under § 1602.2, “Each applicant, and each person submitting a protest shall attend the roll call hearing in person or appear through a designated representative.” 23 DCMR § 1602.2 (West Supp. 2014). Further, under § 1602.3,

Failure to appear in person or through a designated representative may result in denial of the license application or dismissal of a protest, unless, in the discretion of the Board, good cause is shown for the failure to appear.<sup>1</sup>

23 DCMR § 1602.3 (West Supp. 2014).

7. In the case of ANC 5C, the question is whether Commissioner Butler's designation of authority to Ms. Odunsi was appropriate. Under § 1706.5, “Any party appearing or having the right to appear before the Board in any proceeding shall have the right to representation by an attorney or designated representative of his or her choice.” 23 DCMR § 1706.5 (West Supp. 2014). Here, the Chair of the ANC stated that this type of delegation is inappropriate under the ANC's rules; therefore, the Board is forced to conclude that Ms. Odunsi was not authorized to represent ANC 5C. *Supra*, at ¶ 1. Consequently, the Board dismisses ANC 5C for failing to appear in accordance with § 1602.3.

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<sup>1</sup> The regulation then states: “Examples of good cause for failure to appear include, but are not limited to: . . . (b) death or sudden illness in the immediate family, such as spouse, partner, children, parents, siblings . . . .” In light of this guidance provided by the regulation, Commissioner Butler may have a strong claim that she had good cause for missing the hearing. Nevertheless, the Board will not address this potential claim unless a formal motion for reinstatement is filed by ANC 5C and the dismissed signatories that provides sufficient facts justifying Commissioner Butler's absence from the hearing.

8. The Board also notes that Commissioner Butler was the sole designated representative for the Odunsi Group. Under § 1706.1, “In any proceeding before the Board, an individual may appear on his or her own behalf.” 23 DCMR § 1706.1 (West Supp. 2014). Here, the only members of the group that appeared were Yolanda Odunsi, Carlos Davis, Frances Penn, Evelyn Fraser, Camila Faulkner, and Mal Gwinn; as a result, because these signatories appeared in person, the Board finds that they properly appeared at the Roll Call Hearing in accordance with §§ 1602.2 and 1706.1. *Supra*, at ¶ 3. Nevertheless, because the remaining signatories did not appear or appoint an alternative designated representative, the Board must dismiss them from the protest under 1602.3. Therefore, the Odunsi Group remains a protestant as a group of six residents and property owners.

9. Finally, the Board dismisses Leslie Satchell, Janay Austin-Carlson, and Katherine Ford from the protest. Under § 25-602(a), “Any person objecting, under § 25-601, to the approval of an application shall notify the Board in writing of his or her intention to object and the grounds for the objection within the protest period.” D.C. Official Code § 25-602(a). The Board notes that none of these individuals filed a timely petition with the Board or signed the protest petition filed by the Odunsi Group. *Supra*, at ¶ 4. Therefore, the Board is forced to dismiss them from the protest under § 25-602(a).

### ORDER

Therefore, based on the foregoing, the Board, on this 23rd day of April 2014, **GRANTS-IN-PART** and **DENIES-IN-PART** Pulse’s Motion to Dismiss. The Board **DISMISSES** the protest filed by ANC 5C. In addition, the Board **DISMISSES** all members of the Odunsi Group that failed to appear at the Roll Call Hearing.

**IT IS FURTHER ORDERED** that the sole members of the Odunsi Group are as follows: Yolanda Odunsi, Carlos Davis, Frances Penn, Evelyn Fraser, Camila Faulkner, and Mal Gwinn.

**IT IS FURTHER ORDERED** that Leslie Satchell, Janay Austin-Carlson, and Katherine Ford are dismissed, because they did not file a timely protest petition in accordance with § 25-602.

ABRA shall deliver copies of this Order to the Applicant, ANC 5C, and the Odunsi Group.

District of Columbia  
Alcoholic Beverage Control Board



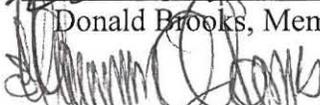
Ruthanne Miller, Chairperson



Nick Alberti, Member

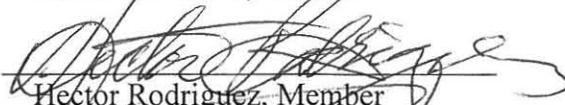


Donald Brooks, Member



Herman Jones, Member

Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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 (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).