

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

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Stephens, David J.W.	)	Case Number:	14-PRO-00040
t/a Saloon 45	)	License Number:	094842
	)	Order Number:	2014-303
Application for a New	)		
Retailer's Class CT License	)		
	)		
at premises	)		
1821 18th Street, N.W.	)		
Washington, D.C. 20009	)		

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

**ALSO PRESENT:** Stephens, David J.W., t/a Saloon 45, Applicant

Paul Pascal, of the firm Pascal & Weiss, P.C., on behalf of the Applicant

Caroline Mindel, on behalf of the Mindel Group, Protestant

Abigail Nichols, Commissioner, on behalf of Advisory Neighborhood Commission (ANC) 2B, Protestant

Peg Simpson, on behalf of the DuPont Circle Village Group

Frederick Michaud, on behalf of the Michaud Group

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**ORDER DENYING MOTION FOR CONTINUANCE AND DISMISSAL OF  
PROTESTANTS**

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## INTRODUCTION

The Alcoholic Beverage Control Board (Board) denies the motion to continue protest hearing in the matter of Stephens, David J.W., t/a Saloon 45 (hereinafter "Applicant" or "Saloon 45"). The Board further denies Saloon 45's motion to dismiss the a group of five or more residents and property owners affiliated with the DuPont Circle Village ("DuPont Circle Village Group"). Finally, the Board also denies Saloon 45's motion to dismiss ANC 2B for failing to appear at the mediation session.

### *Procedural Background*

Saloon 45 submitted an Application for a New Retailer's Class CT License (Application). The deadline to file a protest against the Application was on June 9, 2014. 61 D.C. Reg. 4867283 (Apr. 25, 2014). The following persons and entities submitted protest letters in opposition to the Application: the DuPont Circle Village Group; Advisory Neighborhood Commission (ANC) 2B; a group of seven residents or property owners, represented by Caroline Mindel (Mindel Group); and another group of residents and property owners, represented by Frederick Michaud (Michaud Group).

The Roll Call Hearing was held on June 23, 2014, and the parties had mediation scheduled for July 7, 2014. The Protest Status Hearing was held on July 9, 2014.

The DuPont Circle Citizens Association was dismissed from the protest, because it filed an untimely protest petition. See In re Stephens, David J.W., t/a Saloon 45, Case No. N/A, Board Order No. 2014-278 (D.C.A.B.C.B. Jul. 9, 2014).

Saloon 45 has made three motions to the Board: (1) to continue the Protest Hearing scheduled for August 6, 2014; (2) to dismiss the DuPont Circle Village Group for lack of standing; and (3) to dismiss ANC 2B for failing to appear at mediation. These motions have been formally opposed by various parties involved in the protest. The Board denies these motions for the reasons discussed in this order.

#### **I. THE BOARD DENIES THE APPLICANT'S MOTION TO CONTINUE THE PROTEST HEARING.**

Saloon 45 requests a continuance in order to continue negotiations over a settlement agreement. This request has been opposed by the Mindel Group; therefore, the Board finds it unlikely that this matter can be settled by mutual consent of the parties. *Opposition to a Motion to Continue the Hearing Dated August 6, 2014*. Consequently, the Board finds no good cause to move the date of the Protest Hearing in this matter.

#### **II. THE BOARD DENIES THE APPLICANT'S MOTION TO DISMISS THE DUPONT CIRCLE VILLAGE GROUP.**

Saloon 45 argues that the DuPont Circle Village Group applied for standing as a civic association under D.C. Official Code § 25-601(3), not a group of residents and property owners under D.C. Official Code §25-601(2). *Motion to Dismiss DuPont Circle Village*, 1.

This argument is not supported by the record. The DuPont Circle Village group filed a timely protest letter that states, the “[n]ames of Dupont Circle Village Members protesting the application of Saloon 45” are Maria L. Haber, Peg Simpson, Irv Molotsky, Pete Klempay, John Hammer, Brad Edwards, and Alan Lopez. *Letter from Irv Molotsky, President, Dupont Circle Village to Ruthanne Miller, Chairperson, Alcoholic Beverage Control (ABC) Board, 2-3.* As result, the Board finds that the DuPont Circle Village Group provided sufficient notice that the protest was filed on behalf of the signatories, and not the entire Dupont Circle Village organization.<sup>1</sup> See *Paul v. Bier*, 758 A.2d 40, 46 (D.C. 2000) (“We are mindful, however, of the liberal construction we place on pleading rules to achieve substantial justice over formalism”). Therefore, the motion to dismiss the DuPont Circle Village Group is denied.

### **III. THE BOARD DENIES THE APPLICANT’S MOTION TO DISMISS ANC 2B.**

Saloon 45 requests that the Board dismiss ANC 2B for failing to appear at the mediation. *Motion to Dismiss Dupont Circle Advisory Neighborhood Commission 2B.* ANC 2B has informed the Board that it failed to attend the mediation session due to an “internal miscommunication” and that it accidentally missed the mediation session. *Letter from Will Stephens, Chair, ANC 2B, to Ruthanne Miller, Chairperson ABC Board, 1-2* (Jul. 10, 2014).

Under § 25-445(e), “If the protestant unreasonably refuses to make himself or herself available to attend a settlement conference, the Board shall consider the protest withdrawn unless, in the judgment of the Board, the protestant shows good cause for refusing to be available.” D.C. Official Code §25-445(e).

The Board credits ANC 2B’s pleading that it did not intentionally miss the mediation session and that its failure to attend was accidental. For this reason, the Board finds good cause for missing the mediation session and does not deem its absence from the session unreasonable. Therefore, Saloon 45’s motion to dismiss ANC 2B is denied.

### **ORDER**

Therefore, the Board, on this 30th day of July 2014, hereby **DENIES** motions filed by Saloon 45. The Protest Hearing shall occur as scheduled on August 6, 2014. The ABRA shall distribute copies of this Order to the Applicant and the DCCA.

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<sup>1</sup> The fact that the group members are all affiliated with the Dupont Circle Village simply shows that the members have “common grounds” pursuant to D.C. Official Code § 25-601(2).

District of Columbia  
Alcoholic Beverage Control Board

  
Ruthanne Miller, Chairperson

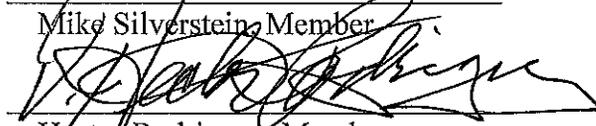
Nick Alberti, Member

  
Donald Brooks, Member

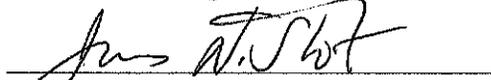
Herman Jones, Member

  
Mike Silverstein, Member

Hector Rodriguez, Member

  
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James Short, Member

  
James Short, Member

Under 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, under 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 under 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).