

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

In the Matter of:)	
)	
Accott Ventures, LLC)	Case Number: 10-PRO-00146
t/a Shadow Room)	License Number: 075871
)	Order: 2011-145
Application to Renew a)	
Retailer's Class CN License)	
)	
at premises)	
2131 K Street, N.W.)	
Washington, D.C. 20037)	

Accott Ventures, LLC, t/a Shadow Room (Applicant)

Emanuel N. Mpras, on behalf of the Applicant

Florence Harmon, Commissioner, Advisory Neighborhood Commission (ANC) 2A,
Protestant

Chris Labas, on behalf of A Group of Five or More Individuals, Protestant

BEFORE: Charles Brodsky, Chairperson
Mital M. Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ORDER DENYING APPLICANT'S MOTION TO DISMISS

Accott Ventures, LLC, t/a Shadow Room (Applicant), filed an Application to Renew its Retailer's Class CN License. The Application was timely protested on November 8, 2010, by Advisory Neighborhood Commission (ANC) 2A, represented by ANC Commissioner Florence Harmon, and a Group of Five or More Individuals, represented by Chris Labas (collectively the "Protestants"). The Application came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 22, 2010, and a Status Hearing on January 5, 2010, in accordance with D.C. Official Code § 25-601 (2001). Mediation between the parties was held on December 9, 2010. The Protest Hearing is scheduled for May 4, 2011, at 1:00 p.m. The Applicant filed a Motion to Dismiss the protest on December 30, 2011. The Protestants replied on January 10, 2010. The Board held a Motion Hearing on February 2, 2011.

The Applicant argues that the Board should dismiss the Protestants. According to the Applicant, the Protestants failed to mediate in good faith under D.C. Code § 25-445(e) (2001). In addition, the Applicant states that ANC Commissioner Harmon cannot represent ANC 2A because she is currently appealing the Board's decision in Board Order No. 2010-418 regarding Panutat, LLC, t/a Sanctuary 21, because this creates a conflict of interest. The Board rejects the Applicant's arguments.

The Protestants did not violate D.C. Code § 25-445(e). The ABC law states:

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refuses to make himself or herself available to attend a settlement conference, the Board shall consider the protest withdrawn unless, in the judgment of the Board, the protestant shows good cause for refusing to be available.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

Section 25-445(e) only requires that the Protestants make themselves "available to attend a settlement conference." There is no requirement that the parties negotiate in good faith under § 25-445(e); only that they attend the Mediation scheduled by the Board. Although the Board encourages parties to work out their differences amicably, there is no requirement that they do so. Therefore, the Protestants satisfied § 25-445(e) by merely attending the settlement conference.

Furthermore, the Board does not find that Commissioner Harmon's representation of ANC 2A in this matter creates a conflict of interest. The Applicant has not cited any law or regulation that demonstrates that Commissioner Harmon's involvement in appealing a prior Board decision regarding a separate ABC license creates a conflict of interest. Furthermore, the Board notes that the Executive Director of the Office of Advisory Neighborhood Commissions, Gottlieb Simon, has written a letter to the Board indicating that he does not believe that Commissioner Harmon has a conflict of interest. If the Applicant cannot point to a specific law or regulation that bars Commissioner Harmon from representing ANC 2A in this matter, then the Board will not prevent her from representing her ANC.

For these reasons, the Motion to Dismiss is denied.

ORDER

The Board does hereby, this 23rd day of February 2011, **DENIES** the Motion to Dismiss submitted by the Accott Ventures, LLC, t/a Shadow Room. Copies of this Order shall be delivered to the Applicant, ANC 2A, and Chris Labas. The Protest Hearing is scheduled for May 4, 2011 at 1:00 p.m.

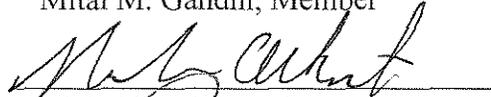
District of Columbia
Alcoholic Beverage Control Board



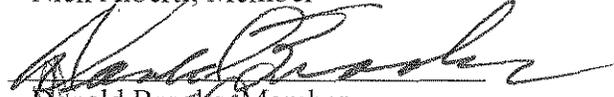
Charles Brodsky, Chairperson



Mital M. Gandhi, Member



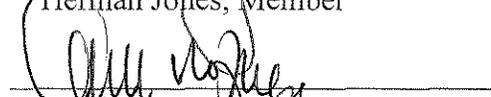
Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 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, 1250 U Street, N.W., 3rd Floor, Washington, D.C. 20009.

Also, 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 (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).