

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

<b>In the Matter of:</b>	)		
	)		
Acott Ventures, LLC	)	License No.:	075871
t/a Shadow Room	)	Case No.:	13-PRO-00149
	)	Order No.:	2014-321
Application to Renew a	)		
Retailer's Class CN License and	)		
	)		
at premises	)		
2131 K Street, N.W.	)		
Washington, D.C. 20037	)		
	)		

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

**ALSO PRESENT:** Acott Ventures, LLC, t/a Shadow Room, Applicant  
  
Emanuel Mpras, Counsel, on behalf of the Applicant  
  
Chris Labas, on behalf of A Group of Five or More Individuals,  
Protestant  
  
Florence Harmon, Chairperson, Advisory Neighborhood  
Commission (ANC) 2A, Protestant  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

---

**ORDER ON MOTION FOR STAY**

---

On July 16, 2014, the Alcoholic Beverage Control Board granted the renewal application filed by Acott Ventures, LLC, t/a Shadow Room, (hereinafter "Applicant" or "Shadow Room") on the condition that it hire the Metropolitan Police Department Reimbursable Detail when the establishment is in operation. In re Acott Ventures, LLC, t/a Shadow Room, Case No. 13-PRO-00149, Board Order No. 2014-287, 11 (D.C.A.B.C.B. Jul. 16, 2014). Shadow Room filed a motion to stay, which was followed

by an eloquently written opposition by the protestants. *Applicant's Petition to Stay Board Order No. 2014-252*, 1 [*Motion*];<sup>1</sup> *Memorandum of Advisory Neighborhood Commission 2A in Opposition to Applicant's Petition to Stay Order 2014-287*, 1 [*Opposition*]; *Joinder of Group of Five or More Residents or Property*. The Board further notes that Shadow Room has filed a Petition for Review with the District of Columbia Court of Appeals.

At the outset, the Board notes that Shadow Room failed to file a Motion for Reconsideration with the Board; therefore, the Respondent has waived its opportunity to file a motion for reconsideration under D.C. Official Code § 25-433(d)(1).<sup>2</sup>

The Board notes that it agrees with the protestants' view that Shadow Room's claims are not likely to succeed on the merits. *Opposition*, 2-10. Briefly, the Board explains why it rejects Shadow Room's arguments regarding the Board's prior Order:

First, the Board is befuddled by Shadow Room's argument that it is being required to prove a negative or that the burden of proof is somehow shifted to the protestants. *Petition*, 6. A simple reading of paragraph 36 in the prior order and D.C. Official Code § 25-311(a) shows that this is not the case. *In re Acott Ventures, LLC, t/a Shadow Room*, Board Order No. 2014-287 at ¶ 36 (citing specific evidence of disruptions to the neighborhood's peace, order, and quiet caused by the establishment's patrons); D.C. Official Code § 25-311(a) ("... the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located ...").

Second, the Board further rejects Shadow Room's argument that the Board misapplied § 25-315(b)(1). *Petition*, 8-9. As paragraph 40 of the prior Order shows, the Board considered Shadow Room's prior history as justification for not cancelling the license. *In re Acott Ventures, LLC, t/a Shadow Room*, Board Order No. 2014-287 at ¶ 40. Furthermore, Shadow Room's statement that the Board relied upon "unspecified and undocumented allegations of prior misconduct by the Protestants and a video of a single disorderly person to impose a police detail" is simply a mischaracterization of the Board's prior Order. *Petition*, 9; *id.* at ¶ 36. Therefore, this claim is without merit.

Third, Shadow Room, relying on *Padou*, argues that the Board cannot consider "generalized grievances." *Petition*, 9. However, *Padou* only addresses the issue of standing, nothing more. *Padou v. District of Columbia Alcoholic Beverage Control Bd.*, 70 A.3d 208, 209, 213 (D.C. 2013).<sup>3</sup> Therefore, the Board rejects this argument, because it is not supported by authority and entirely without merit.

---

<sup>1</sup> Shadow Room cites an incorrect Board Order Number in the title of its motion to stay. The Board's final order in the Shadow Room matter is Board Order Number 2014-287.

<sup>2</sup> The Board further notes that by failing to file a motion for reconsideration, a party has an obligation to "... make a strong showing of compelling circumstances ..." in order to excuse its failure to exhaust its administrative remedies, which prevents an administrative agency from applying its "... expertise to the problem at hand." *Barnett v. District of Columbia Dept. of Employment Services*, 491 A.2d 1156, 1160 (D.C. 1985).

<sup>3</sup> There is no dispute in this case as to whether the protestants have standing to protest Shadow Room's license.

Fourth, Shadow Room argues that the Board should not have solicited the views of Detective Crumbly or MPD Lieutenant Donald Craig on the matter of traffic, public safety, or the need for a police detail. *Petition*, 12-14.<sup>4</sup> Again, Shadow Room mischaracterizes the Board's decision, which did not rely on Det. Crumbly or Lt. Craig's opinion, but solely their observations as a fact-witnesses.<sup>5</sup> As the Board noted in paragraph 40, the imposition of the MPD Reimbursable Detail condition is a reasonable means of addressing the protestants' concerns without having to cancel Shadow Room's license. In re Acott Ventures, LLC, t/a Shadow Room, Board Order No. 2014-287 at ¶ 40. As a result, this argument is without merit.<sup>6</sup>

Fifth, Shadow Room's discrimination argument is not well-taken. *Petition*, 17-21. In the Board's prior order, the Board chided Shadow Room for making unsubstantiated and conclusory claims. In re Acott Ventures, LLC, t/a Shadow Room, Board Order No. 2014-287 at 10 n. 3. Shadow Room now cites Det. Crumbly's opinion that the establishment's patrons are not "high-end" or "sophisticated," as a basis for imputing a discriminatory motive to all of the protestants, even though Det. Crumbly was merely a witness in this case. *Petition*, 18. In the Board's view, this is simply an absurd line of reasoning that is entirely without merit.

Sixth, Shadow Room's argument that the Board does not have the authority to impose a reimbursable detail on the establishment is simply incorrect as a matter of law. *Opposition*, 7-10.

Nevertheless, the Board grants the motion to stay, solely because once Shadow Room hires the MPD Reimbursable Detail, it will be unable to recover any money it spends on the detail. Kuflom v. District of Columbia Bureau of Motor Vehicle Services, 543 A.2d 340, 344 (D.C. 1988). Therefore, the Board finds that a stay is warranted.

## ORDER

Therefore, the Board, on this 13th day of August 2014, hereby **STAYS** Board Order No. 2014-287. Copies of this Order shall be sent to the Applicant and the protestants.

---

<sup>4</sup> The Board notes that it is ill-advised for an applicant to argue that MPD is "understaffed" based on the Board's prior precedent. In re Dos Ventures, LLC, t/a Riverfront at the Ball Park, Case No. 13-PRO-00088, Board Order No. 2013-512, ¶ 50 (D.C.A.B.C.B. Nov. 13, 2013) (the Board denied an application, in part, because the Board lacked confidence "... that MPD has sufficient resources to police the establishment and the surrounding streets."); see also In re Pulse Nightclub t/a Pulse Nightclub, Case No. 14-PRO-00021, Board Order No. 2014-311, ¶¶ 60-64 (D.C.A.B.C.B. May 7, 2014) (denying the application based on the undue burden the establishment would place on MPD).

<sup>5</sup> Shadow Room does not explain how statements that the Board did not include in its written order can constitute legal error or be attributed to the Board. D.C. Official Code §§ 2-509(e), 25-433(c); 23 DCMR §§ 1718.1, 1718.2 (West Supp. 2014).

<sup>6</sup> Finally, the Board notes that even if the testimony and evidence presented by Det. Crumbly and Lieutenant Donald Craig were excluded, the Board would reach the same decision based on the remaining evidence in the record. See In re Acott Ventures, LLC, t/a Shadow Room, Board Order No. 2014-287 at ¶¶ 22-32, 36.

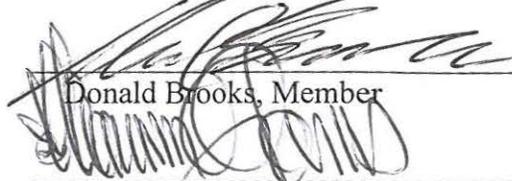
District of Columbia  
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member

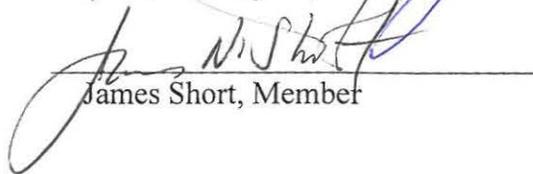
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Pursuant to 23 DCMR § 1719.1 (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, 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 (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).