

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

In the Matter of:)	
)	
HRH Services, LLC)	License No: 097969
t/a The Alibi)	Case No.: 15-PRO-00096
)	Order No: 2016-293
Applicant for a New)	
Retailer's Class CR License)	
)	
237 2nd Street, N.W.)	
Washington, D.C. 20001)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

ALSO PRESENT: HRH Services, LLC, t/a The Alibi, Applicant

Richard Bianco, Counsel, Hessler & Bianco Group, on behalf of the Applicant

Charles Parsons, Counsel, on behalf of the Abutting Property Owner Protestants

Karen Wirt, Chairperson, Advisory Neighborhood Commission (ANC) 6C, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING MOTION TO REOPEN THE RECORD

This Order is issued simultaneously with the Board's final decision resolving the appropriateness and qualifications of HRH Services, LLC, t/a The Alibi, (hereinafter "Applicant" or "HRH"), which is designated Board Order No. 2016-280. *In re HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-0096, Board Order No. 2016-280 (D.C.A.B.C.B. May 18, 2016). Board

Order No. 2016-280 primarily addresses the issue as to whether the Applicant is a front for Martin Scahill. *Id.* at 4-5.

Subsequent to the issuance of Board Order No. 2016-280 and after the submission of Proposed Findings of Fact and Conclusions of Law by the parties, the abutting property owners (Protestants) filed a motion asking the Board to consider new evidence. *Abutting Owners Motion for Leave to Supplement Their Proposed Findings of Fact and Conclusions of Law*, 1. Specifically, the Protestants allege that Mr. Scahill performed construction and installation work at the establishment despite the execution of a barring notice against him and other representations made by the Applicant that Mr. Scahill is “no longer an agent [of] the business.” *Id.* at 2. This motion was opposed by the Applicant. *Applicant’s Opposition to Protestant’s Motion to Reopen the Record*, 1. In response, the Protestants further proffer that Mr. Scahill has keys to the premises. *Abutting Owners Protestants’ Response to Applicant’s Opposition to Protestant’s Motion to Reopen Record*, at 2. The Protestants also proffered a November 2015 email from Mr. Scahill asking a colleague of the landlord about an issue related to renovations at the premises. *Id.* In the email, Mr. Scahill discussed an issue involving the replacement of the door on behalf of the Applicant. *Id.* at Exhibit No. 1. He also stated, “We have our hearing for the ABC license on January 6th and if we don’t have a permit for the patio sorted out it will jeopardize [sic] our ability to get the ABC license. We have invested a million dollars in this building and I need this sorted out” *Id.*

The Board interprets § 1717.1 as allowing for the submission of additional evidence into the record after the end of a hearing with the approval of the Board. 23 DCMR § 1717.1 (West Supp. 2016). The Board’s regulations do not provide a specific standard for considering requests to reopen the record. Nevertheless, the reasoning used by courts in reviewing motions to reopen the record provides sufficient guidelines. Specifically,

In exercising its discretion, the court must consider the timeliness of the motion, the character of the testimony, and the effect of granting the motion. The party moving to reopen should provide a reasonable explanation for failure to present the evidence in its case-in-chief. The evidence proffered should be relevant, admissible, technically adequate, and helpful to the jury in ascertaining the guilt or innocence of the accused. The belated receipt of such testimony should not imbue the evidence with distorted importance, prejudice the opposing party’s case, or preclude an adversary from having an adequate opportunity to meet the additional evidence offered.

King v. United States, 550 A.2d 348, 354 (D.C. 1988). It should also be noted that § 1714.3 provides that “Any oral or documentary evidence may be received, but the Board shall exclude irrelevant, immaterial, or unduly repetitious evidence.” 23 DCMR § 1714.3 (West Supp. 2016).

Here, even if the facts presented by the abutting property owners are true, at the time the alleged incident occurred, the Applicant did not hold a license issued by the Board and was not subject to conditions that required the enforcement of the barring notice. Further, the Board has already made findings that Mr. Scahill had significant involvement in the Applicant’s business in Board Order No. 2016-280. *In re HRH Services, LLC*, Board Order No. 2016-280 at ¶¶ 71-82. Consequently, the Board sees no reason to reopen the record when the proffered information is

similar to other evidence relied upon by the Board and merely bolsters findings and conclusions already made by the Board. *In re HRH Services, LLC*, Board Order No. 2016-280 at ¶¶ 71-77, 80.

ORDER

Therefore, the Board, on this 18th day of May 2016, **DENIES** the motion filed by the Protestants. The ABRA shall deliver a copy of this Order to the designated representative or counsel of each party.

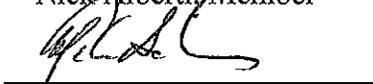
District of Columbia
Alcoholic Beverage Control Board



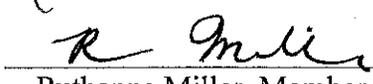
Donovan Anderson, Chairperson



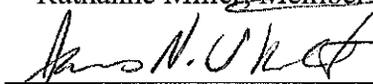
Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

Under 23 DCMR § 1719.1 (West Supp. 2016), 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).