

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

In the Matter of:)		
)		
Watergate Hotel Lessee, LLC)	Case No.:	16-PRO-00085
t/a Watergate Hotel)	License No:	091162
)	Order No:	2016-706
Application to Renew a)		
Retailer's Class CH License)		
)		
at premises)		
2650 Virginia Avenue, N.W.)		
Washington, D.C. 20037)		

BEFORE: Donovan Anderson, Chairperson
Mike Silverstein, Member
James Short, Member
Jake Perry, Member
Mafara Hobson, Member

ALSO PRESENT: Watergate Hotel Lessee, LLC, t/a Watergate Hotel, Applicant

Stephen O'Brien, Counsel, on behalf of the Applicant

Barbara Kahlow, on behalf of the West End Citizens Association,
Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) dismisses the protest of the West End Citizens Association (WECA) for failing to comply with the standing requirement of District of Columbia (D.C.) Official Code § 25-601(3) by failing to pass a resolution authorizing the present protest in accordance with WECA's requirements for holding a meeting of the Board of Directors under its bylaws. In light of WECA's dismissal, the Application to Renew a Retailer's Class CH License (Application) filed by Watergate Hotel Lessee, LLC, t/a Watergate Hotel,

(hereinafter “Applicant” or “Watergate”) shall be treated as unopposed in accordance with D.C. Official Code § 25-311(a).

Procedural Background

The Notice of Public Hearing advertising Watergate’s Application was posted on June 10, 2016, and informed the public that objections to the Application could be filed on or before July 25, 2016. *ABRA Protest File No. 16-PRO-00085*, Notice of Public Hearing [*Notice of Public Hearing*]. The Alcoholic Beverage Regulation Administration (ABRA) received a protest from WECA. *ABRA Protest File No. 16-PRO-00085*, Roll Call Hearing Results.

The parties came before the Board’s Agent for a Roll Call Hearing on August 8, 2016, where the above-mentioned objector was granted standing to protest the Application. On September 28, 2016, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on November 9, 2016.

During the Protest Hearing, the Watergate moved to dismiss WECA’s protest for failing to obtain standing. *Transcript (Tr.)*, November 9, 2016 at 198. In prior cases, the Board has allowed for this type of objection at a protest hearing because standing is jurisdictional and cannot be waived. *In re Watergate Hotel Lessee, LLC, t/a Watergate Hotel*, Case No. 13-PRO-00005, Board Order No. 2013-417, 16, 16 n. 19 (D.C.A.B.C.B. Oct. 2, 2013) (Order Denying Motion for Reconsideration). Upon considering the evidence and testimony presented at the hearing, the Board orally granted the motion to dismiss WECA for lack of standing. *Tr.* 11/9/16 at 202-03.

The Board now formalizes the dismissal of WECA through the issuance of this written Order. *Id.* at 203.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board’s official file, makes the following findings related to the motion:

I. Facts related to the Application.

1. The Watergate Hotel Lessee, LLC, t/a Watergate Hotel, (Applicant) has applied to renew its Retailer’s Class CH License. *Protest File 16-PRO-00085*, Public Notice. In response, WECA has filed a formal protest and was granted standing as a citizens association. *ABRA Protest File No. 16-PRO-00085*, Roll Call Hearing Results (Aug. 8, 2016).

II. Facts related to the operation of WECA.

2. WECA has a five-member Board. *Tr.*, 11/9/16 at 188-89. WECA grants authority to its Board of Directors to choose whether to protest a liquor license. *Id.* at 190.

III. Facts related to WECA's bylaws.

3. WECA's bylaws govern the conduct of WECA's Board of Directors. *WECA Bylaws*, Article IV. Article IV, § 3, states,

Meetings of the Board of Directors are called by the President . . . The presence of the majority of the Directors constitutes a quorum; a quorum must be present in order for the Board to take any action. Meetings may take place by a means of a conference telephone or by any other means of communications equipment which allows all persons to hear each other at the same time.

Id. at Article IV, § 3.

IV. Facts related to the WECA Board of Directors protest vote held on July 21, 2016 and July 22, 2016.

4. On July 21, 2016, and July 22, 2016, WECA's Board of Directors held an email discussion regarding the protest of the Application. *Applicant's Exhibit No. 5* (WECA Emails). On July 21, 2016, at 9:34 a.m., Board of Directors member Barbara Kahlow sent an email to WECA's board describing a meeting with the Watergate's attorney and requesting a vote on a motion to protest the Application. *Id.* Board of Directors member Terry Lynch responded "Yes" by email at 11:05 a.m. on July 21, 2016. *Id.* Board of Directors member Elizabeth Mills¹ voted to "support" the protest through an email sent on July 21, 2016 at 7:34 p.m. *Id.* Finally, Board of Directors member Philippe Lanier voted to support the protest of the Watergate's Application in an email sent on July 22, 2016 at 5:37 a.m. *Id.*

5. On July 21, 2016 and July 22, 2016, the WECA Board of Directors did not meet in person, or otherwise hold a meeting through a telephone or video conference. *Tr.*, 11/9/16 at 194.

CONCLUSIONS OF LAW

6. The Board grants the Watergate's motion to dismiss WECA's protest because the citizens association failed to comply with the requirements for holding a meeting of the Board of Directors under Article IV, § 3, of WECA's bylaws, which violates § 25-601(3)'s requirement for granting standing to a citizens association.

7. Citizens associations are granted standing under Title 25 of the D.C. Official Code for the purpose of protesting an application to renew a liquor license. D.C. Code § 25-601. In order to obtain standing, § 25-601(3) states,

A citizens association incorporated under the laws of the District of Columbia located within the affected area [may file a protest]; provided, that the following conditions are met:

¹ The Board infers the name of the Board of Directors member from the email address contained in the exhibit.

(B) A resolution concerning the license application has been duly approved in accordance with the association's articles of incorporation or bylaws at a duly called meeting, with notice of the meeting given to the voting body and the applicant at least 7 days before the date of the meeting;

D.C. Code § 25-601(3), (3)(B). An entity's bylaws are generally construed according to the principles of contract law and statutory construction. *Johnson v. Fairfax Vill. Condo. IV Unit Owners Ass'n*, 548 A.2d 87, 91 (D.C. 1988). In interpreting contracts, a fact finder must give "the language used its plain meaning" in order to honor the intentions of the parties to the document. *Dyer v. Bilal*, 983 A.2d 349, 355 (D.C. 2009).

8. Because WECA obtained standing as a citizens association, it is required to comply with § 25-601(3) when protesting an application. *Supra*, ¶ 1. WECA's bylaws require in Article IV, § 3, that "[Board of Director's] Meetings may take place by a means of a conference telephone or by any other means of communications equipment which allows all persons to hear each other at the same time." *Id.* at Article IV, § 3. On its face, § 3 requires that WECA's Board of Directors engage in some form of contemporaneous communication in order to hold a valid meeting where the Board of Directors will take an official action. Email communications sent over the course of two days—as is the case here—do not meet the requirement set out in § 3 of the bylaws. *Supra*, at ¶¶ 3-5. Because WECA's resolution authorizing the protest of the Application is based on a vote that did not comply with WECA's bylaws, the resolution is invalid and insufficient to merit standing under § 25-601(3). Therefore, WECA's protest is dismissed for lack of standing.

ORDER

Therefore, the Board, on this 14th day of December 2016, hereby **APPROVES** the Application to Renew a Retailer's Class CH License at premises 2650 Virginia Avenue, N.W. filed by Watergate Hotel Lessee, LLC, t/a Watergate Hotel.

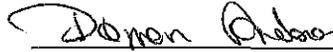
IT IS FURTHER ORDERED that the Application shall be treated as unopposed under D.C. Official Code § 25-311(a).

IT IS FURTHER ORDERED that the written motion filed by WECA through its president, Sara Maddux, has not and will not be considered by the Board because it was improperly filed before the issuance of this Order. WECA is **ADVISED** that it is now authorized to file post-trial motions, if it so chooses, in accordance with the rules set forth in Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver a copy of this order to the Applicant and WECA.

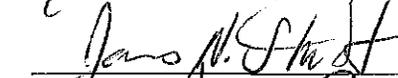
District of Columbia
Alcoholic Beverage Control Board



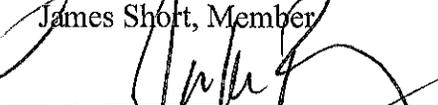
Donovan Anderson, Chairperson



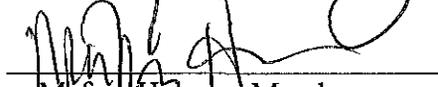
Mike Silverstein, Member



James Short, Member



Jake Perry, Member



Mafara Hobson, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, 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, 430 E Street, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 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).