

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

_____)
In the Matter of:)
)
Spork, LLC)
t/a A n D)
)
Application for a new)
Retailer's Class CT License)
at premises)
1314 9th Street, N.W.)
Washington, D.C.20001)
_____)

License No.: 089950
Case No.: 12-PRO-00074
Order No.: 2012-502

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

**ORDER GRANTING GROUP OF FIVE OR MORE PERSON'S MOTION FOR
REINSTATEMENT**

This matter comes before the Alcoholic Beverage Control Board (Board) on the Application for a new Retailer's Class CT License (Application) filed by Spork, LLC, t/a A n D (Applicant). The Application was timely protested by ANC 2F, represented by Chairperson Michael Bernardo, and A Group of Five or More Individuals (Group), represented by Martin Smith and David Salter.

The Roll Call Hearing occurred on September 10, 2012. At the hearing, the Board, pursuant to 23 DCMR § 1602.3, dismissed the Group because only four individuals were represented at the Roll Call Hearing, either in person or by explicit letter authorizing that they be represented at the Hearing. *Order on Dismissal of Protest of A Group of Five or More Individuals*, September 12, 2012 at 2. Pursuant to the Order, Martin Smith, on behalf of the Group, by letter to ABRA dated September 18, 2012, requested reinstatement of the Group. On October 1, 2012, Applicant filed with ABRA its Opposition to Request for Reinstatement (Opposition), stating that the Group had failed to provide good cause for its failure to appear at the Roll Call Hearing, as required by 23 DCMR § 1602.3.

Having reviewed the Request for Reinstatement, the Opposition and the record before us, we grant the Group's Motion for Reinstatement. As noted in 23 DCMR § 1602.3, the failure of a protestant to appear either in person or through a designated representative at a Roll Call Hearing, without good cause shown, is grounds for dismissal of the protest. Examples of good cause would be, for example, a sudden illness or accident that is sufficiently severe as to prevent attendance, the death of a family member or severe inclement weather. 23 DCMR §§ 1602.3 (a)-(d).

Here, the Group, having already been dismissed for failure to appear, stated that it believed in good faith that the signatures on the protest were an indication that the persons had designated a representative to appear for them at the Roll Call Hearing, which would have meant that the Group had more than enough persons, in person or through designation, at the Roll Call hearing in order to retain its standing. While the Board, in this proceeding, is willing to give the Group the benefit of the doubt, the Board admonishes the Group that, in the future, the Board expects to see specific designations from persons unable to personally participate.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 14th day of November 2012, **GRANTS** the Motion for Reinstatement. ABRA shall deliver copies of this Order to the Government and the Appellant.

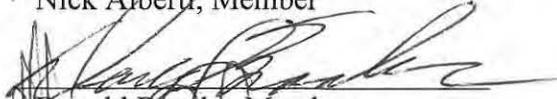
District of Columbia
Alcoholic Beverage Control Board



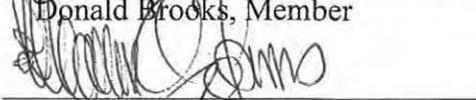
Ruthanne Miller, Member



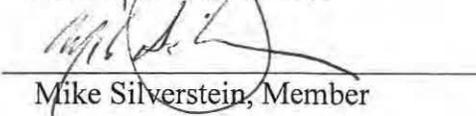
Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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 (April 2004) 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).