

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

In the Matter of:)
)
All Souls, LLC)
t/a All Souls)
)
Application for Substantial Change)
(Change of Hours and Sidewalk Café))
Retailer's Class CT License)
)
at premises)
725 T Street, N.W.)
Washington, D.C. 20001)
)

Case No. 15-PRO-00063
License No. ABRA-088179
Order No. 2015-400

All Souls, LLC t/a All Souls (Applicant)

Andrew Kline, Esq. on behalf of All Souls, LLC t/a All Souls (Applicant)

Stanley Meyes, Abutting Property Owner (Protestant)

James Turner, Chairperson, Advisory Neighborhood Commission (ANC) 1B (Protestant)

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

ORDER DENYING ERICA HURTT'S MOTION FOR RECONSIDERATION

Introduction

This matter comes before the Alcoholic Beverage Control Board (Board) on the Motion for Reconsideration filed by Erica Hurtt, former Abutting Property Owner, in the protest matter regarding the Application for a Substantial Change to its Retailer's Class CT License filed by All Souls, LLC t/a All Souls. The Board hereby denies Ms. Hurtt's Motion and explains its reasoning below.

Procedural History

The Application filed by All Souls, LLC t/a All Souls, for a substantial change to its Retailer's Class CT License, having been timely protested, came before the Board for a Roll Call Hearing on June 29, 2015, in accordance with D.C. Official Code § 25-601 (2015). At the Roll Call Hearing, the Board's Agent granted standing to Abutting Property Owner, Stanley Mayes, and Advisory Neighborhood Commission (ANC) 1B. The Board's Agent also granted conditional standing to the Protestant Group of Seven Individuals, requiring that two more individuals appear at the Protest Status Hearing to maintain standing.

On June 29, 2015, the Board dismissed the Protest of Erica Hurtt, Abutting Property Owner, because Ms. Hurtt failed to appear at the Roll Call Hearing. *See All Souls, LLC t/a All Souls*, Case No.: 15-PRO-00063, Board Order No. 2015-333 (D.C.A.B.C.B. July 8, 2015). The Protestants' attendance at the Roll Call Hearing is required under 23 DCMR § 1603.3.

On July 10, 2015, Ms. Hurtt requested Reinstatement. *ABRA Protest File 15-PRO-00063, Request for Reinstatement* dated July 10, 2015. In response to Ms. Hurtt's request, the Applicant filed an Opposition to Motion for Reconsideration of the Order Dismissing Erica Hurtt's Protest on July 21, 2015. *ABRA Protest File 15-PRO-00063, Opposition to Motion [Opp.]* dated July 21, 2015. On July 29, 2015, the Board denied Ms. Hurtt's request, citing "the failure to demonstrate good cause" as its reason for the denial. *All Souls, LLC t/a All Souls*, Case No.: 15-PRO-00063, Board Order No. 2015-367 (D.C.A.B.C.B. July 29, 2015). Shortly thereafter, the Board dismissed the Group of Five or More Individuals' protest due to the failure of the at least five individuals' failure to appear at the Protest Status Hearing on August 12, 2015. *All Souls, LLC t/a All Souls*, Case No.: 15-PRO-00063, Board Order No. 2015-391 (D.C.A.B.C.B. Aug. 12, 2015). On August 19, 2015, the Board dismissed the Protest of ANC 1B due to the approval of a Settlement Agreement. *All Souls, LLC t/a All Souls*, Case No.: 15-PRO-00063, Board Order No. 2015- (D.C.A.B.C.B. Aug. 19, 2015).

Meanwhile, on August 12, 2015, the Board considered a Motion to Reconsider filed by Ms. Hurtt on August 4, 2015. *ABRA Protest File 15-PRO-00063, Motion for Reconsideration* dated August 4, 2015. In her Motion, Ms. Hurtt stated that she stood by her previous argument that she did not receive the letter communicating the date of the roll call hearing, which prevented her from attending the Roll Call Hearing. *Id.* She further argued that "her property will be tremendously and negatively impacted by the addition of a sidewalk café to the establishment." *Id.*

In response, the Applicant filed an Opposition to Erica Hurtt's Motion for Reconsideration stating that Ms. Hurtt's request is improper and that the Board's previously issued Orders shall remain in full force and effect. *ABRA Protest File 15-PRO-00063, Applicant's Opposition to Erica Hurtt's Motion for Reconsideration*, dated August 11, 2015.

Discussion

In consideration of Ms. Hurtt's Motion for Reconsideration and the Applicant's Opposition to the Ms. Hurtt's Motion for Reconsideration, the Board denies the Motion and

affirms its prior Orders related to this matter. Ms. Hurtt's Motion fails for several reasons. First and foremost, the Board re-emphasizes its arguments with respect to Ms. Hurtt's receipt of notice articulated in Board Order No. 2015-367 as well as in the Applicant's Opposition. *All Souls, LLC t/a All Souls*, Case No.: 15-PRO-00063, Board Order No. 2015-367 (D.C.A.B.C.B. July 29, 2015); *Opp.*, at 1-2. The Board maintains that Ms. Hurtt admitted receipt of the date of the Roll Call Hearing when she acknowledged, and ensured that she submitted a timely protest by, the date of the petition filing deadline. *All Souls, LLC t/a All Souls*, Case No.: 15-PRO-00063, Board Order No. 2015-367 (D.C.A.B.C.B. July 29, 2015), 2-3. Therefore, the Board does not find Ms. Hurtt's argument that she did not receive notice of the Roll Call Hearing to be persuasive.

Additionally, the Board finds that Ms. Hurtt's Motion fails to conform to the requirements of a petition for reconsideration. Under 23 DCMR 1719.3, a petition for reconsideration shall state briefly the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. 23 DCMR § 1719.3. Here, Ms. Hurtt fails to argue that the Board's Conclusions of Law or Findings of Fact were contrary to the evidence provided on the record. Furthermore, the Board finds that a motion for reconsideration from the Board's denial of a request for reinstatement is not an opportunity to reiterate the same argument or raise new arguments. *See Yates v. Behrend*, 280 F.2d 64, 66 (D.C. 1960). Not only has Ms. Hurtt added little to what had been advanced in her Motion for Reinstatement, but she also implores the Board to consider the "tremendous and negative impact" that will result by the addition of a sidewalk café to the restaurant. The Board does not take Ms. Hurtt's concerns lightly, but must uphold fairness to all parties by appropriately enforcing the applicable regulations that govern the protest process. Namely, this includes attending protest proceedings as required by 23 DCMR § 1603 and conforming to the requirements of post-decision filings as set forth by 23 DCMR § 1719.3.

For the foregoing reasons, the Board upholds its decisions in Board Order Nos. 2015-333 and 2015-367. Accordingly, Ms. Hurtt's Motion for Reconsideration is denied.

ORDER

The Board does hereby, this 20th day of August, 2015, **DENIES** Ms. Hurtt's Motion for Reconsideration. The Board **ADVISES** that Ms. Hurtt is free to participate in the pending Protest proceedings as a witness should she want to voice her concerns before the Board.

Copies of this Order shall be sent to the Applicant, Ms. Hurtt, and Abutting Property Owner Stanley Mayes.

District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson

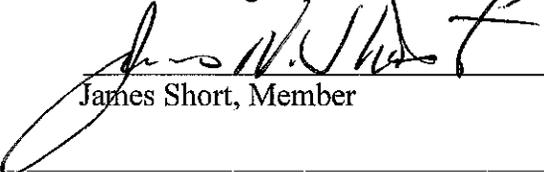

Nick Alberti, Member

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, 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; (202/879-1010). 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).