

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

In the Matter of:)	
Eagle N Exile, LLC)	License Number: 093984
t/a DC Eagle)	Case Number: N/A
Application to Transfer a)	Order Number: 2014-277
Retailer's Class CT License)	
at premises)	
3701 Benning Road, N.E.)	
Washington, D.C. 20010)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Eagle N Exile, LLC, t/a DC Eagle, Applicant

Risa Hirao, Counsel, of the firm Pascal & Weiss, P.C., on behalf of the Applicant

Celia Properties Limited Partnership, LLC, Petitioner

Roderic L. Woodson, Counsel, of the firm Holland & Knight, LLP, on behalf of the Petitioner

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING MOTION TO REPLACARD

Celia Limited Partnership, LLC (Petitioner) filed a Motion to Re-Open Protest Period with the Board regarding the Application to Transfer a Retailer's Class CT License filed by Eagle N Exile, LLC, t/a DC Eagle (DC Eagle). Petitioner claims that the Applicant failed to provide adequate notice to the public of the Application by failing to conspicuously post the required placards in accordance with D.C. Official Code § 25-423.

Motion to Re-Open Protest Period, 1-2 [Motion]. On April 4, 2014, DC Eagle filed an opposition arguing that it followed the placard procedures and provided proper notice to the public. Opposition to Motion to Re-Open Protest Period Filed By Celia Properties Limited Partnership, 1-3 [Opposition]. Petitioner then filed a reply and DC Eagle responded. Reply to D.C. Eagle's Opposition to Celia's Motion to Re-Open Protest Period [Pet. Reply]; Sur-Reply in Response to Reply to Applicant's Opposition to Motion to Re-Open Protest Period Filed by Celia Properties Limited Partnership's [DC Eagle Sur-Reply].

The Board held a hearing on the motions on June 4, 2014. The Board finds that DC Eagle complied with the notice requirements of D.C. Official Code § 25-423(a) and the Board's posting procedures. Therefore, the motion to re-open the protest period is denied. The Board's reasoning is further explained below.

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:

1. The "Notice of Placard Posting" form published by the Alcoholic Beverage Regulation Administration (ABRA) states:
 2. BOTH PLACARDS MUST REMAIN POSTED THROUGH THE 45 DAY PROTEST PERIOD . . .
 4. Both placards must be prominently and visibly displayed to the public.
 5. Both placards must be posted on the front of the establishment and visible from the street.
 6. The placards may be attached to the inside of a window(s) provided the placards can be read through the window(s) from the sidewalk . . .
 8. If the placards have been removed or are posted in a manner not visible from the street, the establishment may be required to re-advertise or re-placard for an additional 45 days

Notice of Placard Posting (DC Eagle).

2. DC Eagle has applied to transfer its Retailer's Class CT License to 3701 Benning Road, N.E. *ABRA Licensing File No.* A map of 3701 Benning Road, N.E., shows that the building is surrounded by the Anacostia Freeway, Benning Road, N.E., and Minnesota Avenue, N.E. *Pet. Reply, Exhibit A.* The portion of the building not facing the three previously mentioned roads faces a parking lot and another building. *Id.* In between the Anacostia Freeway and the portion of the building facing that road lies a number of railroad tracks. *Id.* In between Benning Road, N.E., and the portion of the building facing that road

lies a large empty field. *Id.* A long alley connects the building's parking lot with Benning Road, N.E. *Id.* The portion of Benning Road, N.E., that runs by the building is elevated above the property on which the building lies. *Id.* at Exhibit B. Finally, a large parking lot followed by a number of buildings divides the portion of the building facing Minnesota Avenue, N.E., from Minnesota Avenue, N.E. *Id.* at Exhibit A. Consequently, the building itself is not located near any public street shown on the map. *Id.*

3. The placards were posted by the Applicant on the exterior portions of the building facing Benning Road, N.E., and the exterior portion of the building facing Minnesota Avenue, N.E. *Opposition*, at 2, Exhibit 2. There is no allegation that the placards were intentionally or unintentionally removed or hidden from view. *Transcript*, June 6, 2014 at 9, 13. There is also no allegation in the record that the other manners of notice required by Title 25 of the D.C. Official Code have not been followed.

CONCLUSIONS OF LAW

4. Under § 25-423(a), “[t]he applicant shall post 2 notices, furnished by ABRA, of the application in conspicuous places on the outside of the establishment for the duration of the protest period.” D.C. Official Code § 25-423(a). In accordance with § 1502.5, the placards shall be posted “on the main entrance doors to the premises so as to be visible from the street, or on such other place on the premises as designated by the Board.” 23 DCMR § 1502.5 (West Supp. 2014).

5. Under § 25-423(e), the Board may deem the posting insufficient

[i]f the Board determines that the notices posted at an applicant's establishment have not remained visible to the public for a full 45 days . . . unless the applicant has fully performed all other notice requirements and the Board determines that it is in the best interests, of the parties to proceed at an earlier date.

D.C. Official Code § 25-423(e).

6. The Petitioner attempts to argue that that Board should consider whether the posting had the desired effect; however, that is not the standard created by Title 25. *Tr.*, 6/4/14 at 9-10. Instead, the sole issue in this case is whether the posting of the placards complied with § 25-423(a) and § 1502.5. Here, the placards were posted on Benning Road, N.E., and Minnesota Avenue, N.E. *Supra*, at ¶ 3.

7. There is no allegation that DC Eagle obscured, removed, or hid the placards; instead, the Board is urged to extend the protest period because the distance of the building from any public street makes it unlikely that anyone standing on Benning Road, N.E., or Minnesota Avenue, N.E. would observe the placards. Nevertheless, as the map shows, any person in the alley or parking lot who walked near the building could have observed the signs. *Supra*, at ¶ 2. As a result, under these facts, the Board determines that the placards “remained visible” to the public during the protest period in accordance with § 25-423(e).

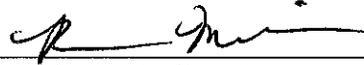
8. Separate and apart from the above, even if the posting were to be deemed inadequate, the Board finds good cause not to extend the protest period in accordance with § 25-423(e). In this case, there is no allegation that DC Eagle failed to comply with the Board's posting instructions. As a result, the Board finds that it would be unjust to subject DC Eagle to an additional or extended protest period when it had no fair warning that complying with the Board's posting instructions would render its posting ineffective.¹

CONCLUSIONS OF LAW

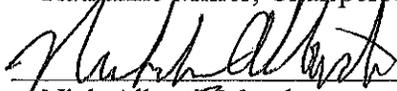
Therefore, the Board, on this 9th day of July 2014, hereby **DENIES** the Motion to Re-Open Protest Period filed by Celia Limited Partnership, LLC (Petitioner). Copies of this Order shall be delivered to the Petitioner and the Applicant.

¹ The Board also notes that there is no viable alternative manner in which the Applicant could post the placards; therefore, it also seems unfair to subject DC Eagle to a second protest period when it has no better means of complying with the notice requirements of § 25-423(a).

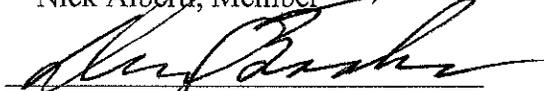
District of Columbia
Alcoholic Beverage Control Board



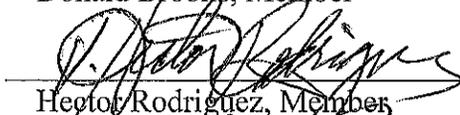
Ruthanne Miller, Chairperson



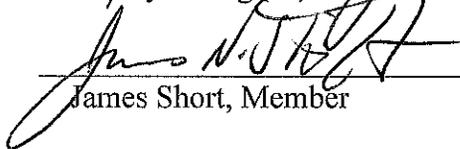
Nick Alberti, Member



Donald Brooks, Member



Hector Rodriguez, Member



James Short, Member

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, 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).