THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
Taste Group, Inc.	)	Case Number: 12-PRO-00059
t/a Hush Restaurant and Lounge	)	License Number: 089332
	)	Order Number: 2012-519
Application for a New	)	
Retailer's Class CT License	)	
	)	
at premises	)	
2121 New York Avenue, N.E.	)	
Washington, D.C. 20002	)	
	)	

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

ALSO PRESENT: Taste Group, Inc., t/a Hush Restaurant and Lounge, Applicant

Jacqueline Manning and Vaughn Bennett, Commissioners, Advisory Neighborhood Commission (ANC) 5B, Protestant

Randall Chandler, on behalf of the Arboretum Neighborhood Association, Protestant

Christopher Collins, Esq., on behalf of the Schaeffers, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER GRANTING APPLICANT'S REQUEST TO WITHDRAW THE APPLICATION

On October 15, 2012, Taste Group, Inc., t/a Hush Restaurant and Lounge, (Applicant) moved to withdraw its application for a New Retailer's Class CT License (Application) at premises 2121 New York Avenue, N.E. Letter from Christopher C. Nwaeze, Taste Group, Inc., to the Alcoholic Beverage Control Board (Oct. 15, 2012).

The Protestants object to this request, because they believe that District of Columbia (D.C.) Official Code 25-338(b) prevents the withdrawal of the Application.

Protestants' Opp. to Applicant's Mot. to Withdraw Application, 1. The Protestants then urge us to deny the Application with prejudice—an action that would bar the Applicant from applying for a Retailer's Class CT License for five years under § 25-338. Id.

Under § 25-338(a), "A second and each subsequent application for the same class of license for the same person or persons shall not be considered within 5 years of a denial." D.C. Code § 25-338 (West Supp. 2012). Part (b) then states, "If an application is withdrawn for good cause, as determined by the Board, before the timely filing of a protest, or if the first application was denied for purely technical or procedural reasons, as determined by the Board, another application by the same applicant for a license of the same class at the same premises may be made at any time." § 25-338(b) (West Supp. 2012).

We first find that § 25-338 does not bar the Applicant from withdrawing its Application at any time. Section 25-338 merely states that subsequent applications are subject to denial for a five-year period if the first application is denied, subject to the exceptions listed in 25-338(b). As such, nothing in Title 25 of the D.C. Official Code bars the Applicant from withdrawing its Application before the Protest Hearing.[1]

In addition, we will not deny the Application with prejudice at this time, because such action on the part of the Board is rendered moot by the withdrawal of the Application. "A case is moot when the legal issues presented are no longer 'live' or when the parties lack a legally cognizable interest in the outcome." N Street Follies Ltd. Partnership v. District of Columbia Bd. of Zoning Adjustment, 949 A.2d 584, 588 (D.C. 2008). Here, the Application has been withdrawn; a fact that ends the present protest. Furthermore, the issue of whether the Applicant's future applications for a Retailer's Class CT License are barred by § 25-338 is not a live controversy, because the Applicant has not attempted to file a second or successive application at this time, which is the threshold requirement for triggering the five-year application ban contained in § 25-338.

For this reason, we will not declare that the withdrawal of the Application constitutes a denial for the purposes of § 25-338 at this time. Nevertheless, if the Applicant files a second or successive application for a Retailer's Class CT License in the next five years, this decision does not preclude the Board from finding that the Applicant's actions in this matter trigger the five-year application ban contained in § 25-338.

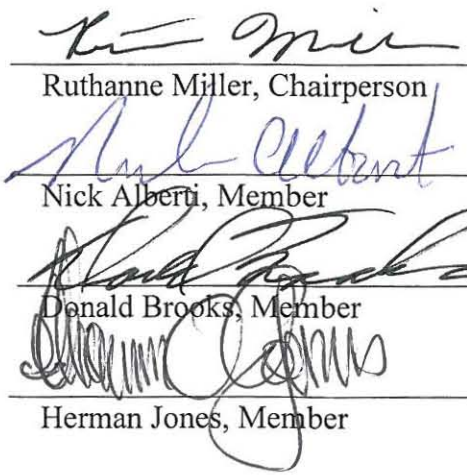
ORDER

Therefore, the Board, on this 5th day of December 2012, hereby **AFFIRMS** the October 15, 2012 withdrawal of the Application for a New Retailer's Class CT License filed by Taste Group, Inc., t/a Hush Restaurant and Lounge. Copies of this Order shall be delivered to the Applicant and the Protestants.

---

[1] This conclusion conforms to our regulations, which only bar the withdrawal of petitions in favor or against an application "after the date of the protest hearing." 23 DCMR §§ 1801.1, 1801.4 (West Supp. 2012).

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Mike Silverstein, Member

Under 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, 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).