

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

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| _____) | |
| In the Matter of:) | |
|) | |
| Island Café, Inc.) | License Number: 060578 |
| t/a Island Café) | Case Number: N/A |
|) | Order Number: 2011-121 |
| Application for an) | |
| Entertainment Endorsement) | |
| at premises) | |
| 829 Upshur Street, N.W.) | |
| Washington, D.C. 20011) | |
| _____) | |

BEFORE: Charles Brodsky, Chairperson
Mital Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ORDER DENYING MOTION FOR RECONSIDERATION

Island Café, Inc., t/a Island Café (Applicant), at premises 829 Upshur Street, N.W., Washington, D.C., filed an application to extend its entertainment hours (Application). The Applicant has requested that the Board allow the Applicant to have entertainment in its establishment from 6:00 p.m. to 2:00 a.m., Sunday to Monday; 7:00 p.m. to 2:00 a.m., on Tuesday through Thursday; and 7:00 p.m. to 3:00 a.m., on Friday and Saturday.

The Application came before the Board on its Administrative Agenda on October 13, 2010. The Board determined that the matter should be noticed to the Advisory Neighborhood Commission (ANC) and the public. Placards to that effect were posted to the establishment and checked by the Enforcement Division of the Alcoholic Beverage Regulation Administration (ABRA) on November 12, 2010 and again on December 27, 2010. The last day to file a protest against the Application was December 27, 2010 which was published on the placard. ANC 4C adopted its protest resolution on December 14, 2010 and sent a copy by facsimile to ABRA on December 29, 2010. ABRA notified the ANC by written letter dated January 3, 2011 that the protest was not timely filed.

ANC 4C filed a Motion for Reconsideration, dated January 14, 2011, admitting that it filed its protest letter one day after the petition deadline expired, but requesting that the

Board grant ANC 4C standing to protest the Application nonetheless. Additionally, ANC 4C alleges that it did not protest the Application because the Applicant stated during a number of public ANC meetings with ANC 4C that it would be withdrawing its Application. ANC 4C further stated that it believed it had properly protested the Application because it was already protesting the renewal Application. Finally, ANC 4C claims that its representative was confused as to the last day to file a protest against the Application and thus, filed it on the wrong day.

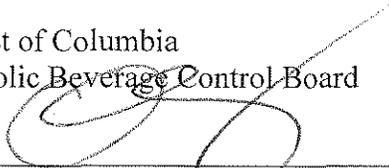
The Board denies ANC 4C's Motion for Reconsideration. The Application was properly noticed and ANC 4C makes no claims to the contrary. It is unfortunate that the Applicant made representations to ANC 4C that it was withdrawing its Application and the Board is displeased that the Applicant did not act in good faith. It is also regrettable that ANC 4C was confused as to the last day to file a protest and presumed that its protest of a previous, separate application was sufficient.

However, it does not relieve the ANC of its obligation to file a timely protest. Instead, ANC 4C should have relied on the notices published by the Alcoholic Beverage Regulation Administration, which informed ANC 4C that the Applicant had submitted an Application for an Entertainment Endorsement and clearly stated the final day to file a protest.

Nevertheless, the Board notes that "[w]hether or not the ANC [4C] participates as a protestant, the Board shall give great weight to [ANC 4C's] recommendations as required by subchapter V of Chapter 3 of Title 1." D.C. Code § 25-602 (2001).

Therefore, upon consideration of ANC 4C's Motion for Reconsideration the Board, on this 9th day of February 2011, hereby **DENIES** the motion.

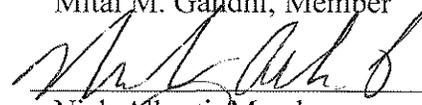
District of Columbia
Alcoholic Beverage Control Board



Charles Brodsky, Chairperson



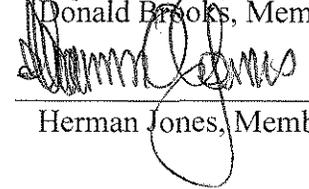
Mital M. Gandhi, Member



Nick Alberti, Member

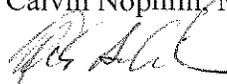


Donald Brooks, Member



Herman Jones, Member

Calvin Nophlin, Member



Mike Silverstein, 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, 1250 U Street, N.W., 3rd Floor, 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. 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) (2004).