

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

In the Matter of:	)	
	)	
The Berliner Group, LLC	)	License Number: 085260
t/a Lapis	)	Case Number: 10-PRO-00129
	)	Order Number: 2010-572
Application for a New	)	
Retailer's Class CR License	)	
at premises	)	
1032 Wisconsin Avenue, N.W.	)	
Washington, D.C. 20007	)	

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 TO RE-PLACARD NOTICE OF APPLICATION**

The Application for a new Retailer's Class CR License (Application) filed by The Berliner Group, LLC, t/a Lapis, (Applicant) at premises 1032 Wisconsin Avenue, N.W., Washington, D.C., was protested by ANC 2E, represented by Chairperson Ron Lewis, Commissioner Bill Starrels, and Commissioner Tom Birch. The Application was also protested by Judi Cochran, as an abutting property owner.

The matter came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on October 18, 2010. Ms. Cochran's protest was dismissed at the Roll Call Hearing because it was determined that she was not, in fact, an abutting property owner and, thus, did not have standing to protest the Application. The Status Hearing was held on November 11, 2010 and Mediation was held on August 17, 2010. The Applicant and ANC 2E are working on the terms and conditions of a Voluntary Agreement. If a Voluntary Agreement is not reached, the Protest Hearing is scheduled for January 12, 2010.

The Notice of Application was posted on August 20, 2010, and the Petition Deadline was October 4, 2010. Nevertheless, in a letter to the Board, dated November 16, 2010, Brooks Bowers Asia (BBA) alleged that the Applicant did not comply with D.C. Code § 25-423 (2001), which requires applicants to post notice of an application for a

liquor license “in conspicuous places on the outside of the establishment for the duration of the protest period.” D.C. Code § 25-423 (2001).

The statute further states that:

If the Board determines that the notices posted at an applicant's establishment have not remained visible to the public for a full 45 days, the Board shall require the reposting of the notices and shall reschedule the administrative review for a date at least 45 days after the originally scheduled review, *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. Code § 25-423(e) (emphasis added).

The Board notes that an ABRA Investigator posted the notice on August 20, 2010, and checked to ensure that the notices were still in place on September 9, 2010, and October 5, 2010. Based on the timely protests filed by ANC 2E and Judi Cochran, the Board concludes that the notices were conspicuously posted.

In addition, despite BBA’s allegations that the notice was not placed in a conspicuous place, the Board notes that all “other notice requirements” required by § 25-423(e) were complied with, including the requirements of D.C. Code § 25-421 (2001). Consequently, the Board will not require the Applicant to repost its notice because Advisory Neighborhood Commission (ANC) 2E was granted standing as a Protestant, and BBA may contact ANC 2E and request that its concerns be taken into account as the ANC negotiates the Voluntary Agreement and, if necessary, participate in the Protest Hearing. Furthermore, given the fact that the Roll Call Hearing, Status Hearing, and Mediation have already occurred, the Board finds it untimely that BBA would allege improper notice at such a late date. As such, the Board finds no reason to subject the Applicant to further delay.

Therefore, upon consideration of the BBA’s Motion to Re-Placard, the Board, on this 24th day of November 2010, hereby **DENIES** BBA’s Motion.

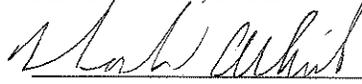
District of Columbia  
Alcoholic Beverage Control Board

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Charles Brodsky, Chairperson

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Mital Gandhi, Member



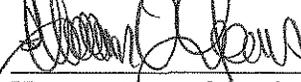
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Nick Alberti, Member



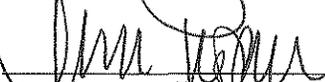
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Donald Brooks, Member



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Herman Jones, Member



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Calvin Nophlin, Member

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Mike Silverstein, 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).