

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

In the Matter of:

Mad Hatter CT Avenue, LLC
t/a Mad Hatter

)
)
) Case Number: 10-PRO-00141
) License Number: 82646
) Order Number: 2011-088
)
)

Application for a Substantial Change
to a Retailer's Class CT License

at premises
1321 Connecticut Avenue, N.W.
Washington, D.C. 20036

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

**ORDER DENYING PROTESTANT'S MOTION TO DISMISS AND MOTION FOR
CONTINUANCE**

The Application for a Substantial Change filed by Mad Hatter CT Avenue, LLC, t/a Mad Hatter (Applicant), having been protested by Advisory Neighborhood Commission (ANC) 2B, represented by ANC Commissioner Victor Wexler and A Group of Five or More Individuals, represented by Abigail Nichols and Jim King, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 29, 2010, and a Status Hearing on January 12, 2011, in accordance with D.C. Official Code § 25-601 (2001). The Protest Hearing is scheduled for February 16, 2011.

On January 5, 2011, Ms. Nichols, on behalf of the Group of Five or More Individuals requested that the Board determine that a sidewalk café is not appropriate under D.C. Code § 25-314(b)(1) (2001) given the Applicant's proximity to a school. The Group of Five or More also requests a continuance because the Applicant has not yet completed its public space application. The Board interprets Ms. Nichols' first request as a Motion to Dismiss because if the Board grants the request it would result in the dismissal of the Application. The Applicant submitted a reply on January 10, 2011.

The Board summarily dismisses Ms. Nichols' Motion to Dismiss. Section D.C. Code § 25-314(b)(1) states:

(b)(1) No license shall be issued for any establishment within 400 feet of a public, private, or parochial primary, elementary, or high school; college or university; or recreation area operated by the District of Columbia Department of Parks and Recreation, except as provided in paragraphs (2) through (5) of this subsection. D.C. Code § 25-314(b)(1) (2001).

The Board also notes that:

(b)(3) The 400-foot restriction shall not apply if there exists within 400 feet a currently-functioning establishment holding a license of the same class at the time that the new application is submitted. D.C. Code § 25-314(b)(3) (2001).

As stated in the Applicant's reply, § 25-314(b)(1) only applies to the issuance of an ABC license, not the application for a sidewalk café endorsement. Furthermore, § 25-314(b)(1) did not prevent the Board from issuing the Applicant a license because there were numerous Class C licenses near the school in question at the time the Applicant applied for a license, which, in turn, qualified the Applicant for the exception to § 25-314(b)(1) contained in § 25-314(b)(3). As a result, the Motion to Dismiss has no merit.

Finally, the Board has the discretion to grant a continuance for good cause or an extreme emergency. D.C. Code § 25-441(a) (2001). The Applicant is entitled to delay obtaining a public space permit until the Applicant knows whether it is allowed to serve alcoholic beverages in the space. As such, Ms. Nichols has not shown good cause or an emergency and thus, her request is denied.

As such, Ms. Nichols' Motion to Dismiss and Motion for Continuance is denied.

ORDER

The Board does hereby, this 26th day of January 2011, **DENY** the Motion to Dismiss and Motion for Continuance submitted by the Group of Five or More Individuals. Copies of this Order shall be sent to the Applicant, ANC 2B, and Ms. Abigail Nichols and Mr. Jim King representing the Group of Five or More Individuals.

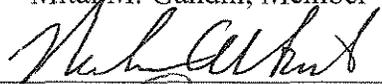
District of Columbia
Alcoholic Beverage Control Board



Charles Brodsky, Chairperson



Mital M. Gandhi, Member



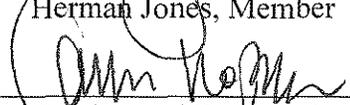
Nick Alberti, Member



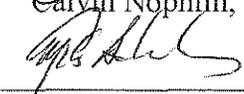
Donald Brooks, Member



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).