

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

In the Matter of:)	
)	
Margot's Chair, Inc.)	Case No.: 11-PRO-00021
t/a TBD)	License No.: 86623
)	Order No.: 2011-308
Application for a New)	
Retailer's Class CR License)	
)	
at premises)	
3415 11th Street, N.W.)	
Washington, D.C. 20010)	
)	

Margot's Chair, Inc., t/a TBD, Applicant

Stephen J. O'Brien, Esq., on behalf of the Applicant

Richard DuBeshter, on behalf of A Group of Five or More Individuals, Protestants

BEFORE: Nick Alberti, Interim Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ORDER DENYING PROTESTANTS' REQUEST FOR REINSTATEMENT

The Application for a new Retailer's Class CR License (Application) filed by Margot's Chair, Inc., t/a TBD (Applicant), to renew its Retailer's Class CR License, having been protested, came before the Alcoholic Beverage Regulation Administration (ABRA) for a Roll Call Hearing on May 9, 2011, in accordance with D.C. Official Code § 25-601 (2001). A Group of Five or More Individuals (Protestants) timely filed a protest letter on April 25, 2011, opposing the Application. Advisory Neighborhood Commission (ANC) 1C also protested the Application but withdrew its protest after the Applicant and ANC 1C submitted a Voluntary Agreement.

On June 8, 2011, the Board dismissed the Group of Five or More Individuals because the Group of Five or More Individuals had fewer than five people in the group. See 23 DCMR § 1602.3 (2008). Subsequently, Richard DuBeshter, representing the Group of Five or More Individuals, filed a Motion for Reinstatement (Motion) with the Board.

The Roll Call Hearing occurred on May 9, 2011, and the Status Hearing occurred on June 8, 2011. During the Roll Call Hearing, both the Applicant and the members of the Protestants'

group appeared at the hearing. See generally *Transcript (Tr.)*, May 9, 2010. Samuel Randell appeared at the hearing and produced a letter showing he was the designated representative of Richard DuBeshter. In addition, George Porter, William Carter, Ken Fan, Kristen Stier, and Yavonne Vaughn were present at the Roll Call Hearing. The Board's Agent noted that six members of the Protestants' group were present and had standing to file a protest against the Application. *Tr.*, 5/9/10 at 8.

In addition, the Board's Agent explained to the Protestants that even though Mr. Randell was Mr. DuBeshter's designated representative, Mr. DuBeshter was not granted standing as a protestant because he was not present at the Roll Call Hearing. *Tr.*, 5/9/10 at 9. The Board's Agent then asked Mr. Randell if he was going to continue to represent the Protestants. *Tr.*, 5/9/10 at 12. In response, Mr. Randell stated, "I'll have to talk to Richard about that. I'd prefer [Mr. DuBeshter] to do it." *Tr.*, 5/9/10 at 12.

During the Roll Call Hearing, the Board's Agent also explained to the Protestants the rules regarding standing. Accordingly, the Board's Agent told the Protestants that if only the Protestants' designated representative appeared at the Roll Call Hearing, the Protestants would have only received conditional standing and the other members of the Group of Five or More Individuals would have had to appear at the Status Hearing. *Tr.*, 5/9/10 at 15.

In the time between the Roll Call Hearing and the Status Hearing, George Porter and Yavonne Vaughan sent written notice to the Board withdrawing their protest against the Application. This left the Protestants with five members because Mr. DuBeshter was present at the Status Hearing on June 8, 2011. *Tr.*, June 8, 2011 at 2-3.

In addition, during the Status Hearing, the Applicant requested that the Board dismiss the protest of Mr. Fan because he is not a resident or property owner in the District of Columbia. *Tr.*, 6/8/11 at 4. Mr. Fan stated that he represented his parents who own the abutting building; however, as noted by the Board during the hearing, neither of Mr. Fan's parents had signed the protest letter and could not be granted standing at the Status Hearing due to this defect. *Tr.*, 6/8/11 at 6-7, 14.

The Applicant then requested that the Board dismiss the protest because the Protestants' group fell below five members as required by law. *Tr.*, 6/8/11 at 4-5. The Protestants then attempted to add John Henderson as a protestant. However, the Applicant argued that Mr. Henderson could not be a protestant because he did not designate a representative to appear on his behalf during the Roll Call Hearing nor did he personally appear. *Tr.*, 6/8/11 at 10.

Interim Chairperson Alberti noted to the parties that the Board reviewed the letter of protest and concluded that the "letter does not designate . . . Mr. DuBeshter or anyone as a representative for Mr. Henderson."

The Board then dismissed the Protestants because, as stated by Board Member Jones,

It has been the practice of the Board that if the resident that is interested in being a protestant in [A Group of Five or More Individuals] is not either physically present at the

[Roll Call Hearing] or has a letter designating an individual as a representative, that . . . individual . . . does not have the opportunity to then show up at the [S]tatus [H]earing and be counted as a member of . . . [the Group of Five or More Individuals].

Tr., 6/8/11 at 16.

The Protestants argue in its Motion and reply, submitted on June 27, 2011, that the Board's dismissal of their protest was in error and should be reversed. First, the Protestants argue that Mr. Randell is a representative of Firoozhe Zafari, an abutting property owner, who is eligible to protest the license. Second, the Protestants argue that Ken Fen should be reinstated because he represents his parents, the owners of 1207 Park Road, N.W. Third, the Protestants argue that the original notice of the Application is defective because it listed the incorrect address of the Roll Call Hearing. Fourth, the Protestants argue that the Board should grant John Henderson standing based on statements of the Board's Agent at Mediation and Interim Chairperson at the Status Hearing that standing could be granted at the Status Hearing, even if a party did not appear at the Roll Call Hearing. Finally, the Protestants argue they were not served with papers indicating that George Parker and Yavonne Vaughn had withdrawn and, as such, they should still be considered part of the Protestants' group.

The Applicant, in its reply, argues that the Board's prior decision was correct. First, the Applicant argues that Firoozhe Zafari does not have standing because she was not present at the Roll Call Hearing, nor did she inform the Board that she was designating her son, Mr. Randall, as her designated representative at the Roll Call Hearing. Second, Ken Fen cannot represent his parents, because they did not sign the protest petition or submit a separate protest letter and did not notify the Board they were designating their son as their representative.

Third, even if the Board's notice was defective, they do not have standing to challenge the defective notice because they were not injured by the mistake and they are not permitted to assert the claims of unnamed parties. Fourth, John Henderson cannot have standing in this protest because he did not appear at the Roll Call Hearing and did not designate a representative at the Roll Call Hearing. Furthermore, the Applicant notes that statements made after the Roll Call Hearing have no bearing on this analysis. Finally, the Applicant notes that there is no requirement that Protestants notify other Protestants if they seek to remove themselves from a protest.

We agree with the Applicant and deny the Protestants' Motion.

First, neither Ken Fen's parents, Firoozhe Zafari, or John Henderson have standing.

According to § 1601.6, the "Failure to appear at the administrative review hearing either in person or through a designated representative may result in denial of the license application or dismissal of a protest unless good cause is shown for the failure to appear." 23 DCMR § 1601.6 (2008).

Firoozhe Zafari, Ken Fen's parents, and John Henderson did not appear at the Roll Call Hearing on May 9, 2011, and the Board was not notified that they had appointed designated

representatives. As such, under § 1601.6, the Board dismisses their protest because they did not show good cause for not appearing at the Roll Call Hearing in person or through a designated representative.

Second, the Board also finds that the Protestants lack standing to challenge the Board's notice to the public.

In Miller v. District of Columbia Board of Zoning Adjustment, the District of Columbia Court of Appeals stated that in order to have standing, protestants must allege that "the "challenged action has caused [them] injury in fact . . ." Miller v. District of Columbia Bd. of Zoning Adjustment, 948 A.2d 571, 574 (D.C. 2008) citing Dupont Circle Citizens Ass'n v. Barry, 455 A.2d 417, 421 (D.C. 1983). An injury in fact must be concrete, particularized and not conjectural or hypothetical; "mean[ing] that the injury must affect the [protestant] in a personal and individual way." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 560 n.1 (1992).

Here, the Protestants allege that the notice listed the incorrect address for the Roll Call Hearing. However, the Protestants, as they admitted in their Motion, appeared at the Roll Call Hearing, and, thus, were not misled by the allegedly incorrect notice. As such, the Protestants cannot claim that the allegedly incorrect notice violated their right to notice under the ABC laws. If the Board's notice misled any parties, those parties themselves must come before the Board and assert their rights. Because the Protestants attended the Roll Call Hearing and were not themselves misled by the notice, the Protestants, in accordance with Miller, have not suffered an injury in fact and cannot assert the claims of the unnamed parties. Finally, the Board notes that anyone appearing at the incorrect address, which was ABRA's old office, would have been directed to appear at the agency's new address.

Third, statements made by the Board's Agent at Mediation and Interim Chairperson Alberti at the Status Hearing have no impact on John Henderson's standing to protest the Application. The statements relied upon by the Protestants were made after the Roll Call Hearing, which John Henderson should have attended either in person or through a designated representative if he sought standing in this matter. Statements made after the Roll Call Hearing had no impact on whether Mr. Henderson attended the Roll Call Hearing. As such, the Protestants arguments about the Board's Agent and the Interim Chairperson are meritless.

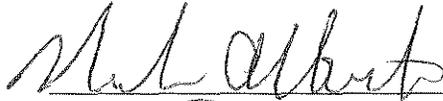
Finally, the Board rejects the Protestants' arguments that Protestants George Parker and Yavonne Vaughn are still members of the protest because they did not notify the other Protestants that they were withdrawing. Simply put, there is no basis in law that supports the Protestants' contentions.

Therefore, for the foregoing reasons, the Board denies the Protestants' Motion for Reinstatement.

ORDER

For these reasons, the Board does hereby, this 6th day of July 2011, **DENY** the Protestants' Motion for Reinstatement. Copies of this Order shall be sent to the Protestants and the Applicant.

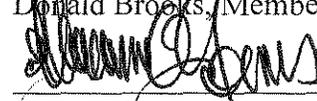
District of Columbia
Alcoholic Beverage Control Board



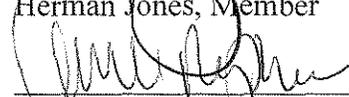
Nick Alberti, Interim Chairperson



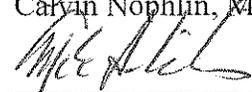
Donald Brooks, Member



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, Reeves Center, 2000 14th Street, NW, 400S, 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).