

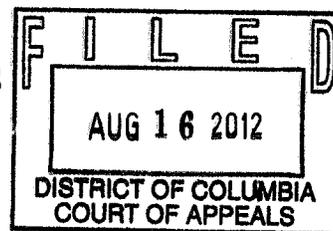
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APPELLATE DIVISION

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 11-AA-0877



WILLIAM CARTER, *et al.*,

PETITIONERS,
[11-PRO-00021]

v.

DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE CONTROL BOARD,
RESPONDENT,

and

MARGOT'S CHAIR INC.,

INTERVENOR,

Petition for Review of Order No. 2011-308
of the District of Columbia Alcoholic Beverage Control Board

(Submitted June 14, 2012)

Decided August 16, 2012)

Before BECKWITH and EASTERLY, *Associate Judges*, and KING, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: This is a petition for review of an order of the Alcoholic Beverage Control Board ("the Board") dismissing the protests of a group of four individuals because their number was inadequate under D.C. Code § 25-601(2) (permitting "a group of no fewer than 5 residents or property owners of the District sharing common grounds for their protest" to appear before the Board and "protest the issuance or renewal of a license").

The gravamen of petitioners' argument is that they were defeated in forming a group sufficient in number to protest intervenor-restaurant Margot's Chair's

application to renew its liquor license because the Board's notice of the "roll call" hearing at which protestors are required to appear in person (or designate a representative to appear), D.C. Mun. Regs § 1602.3, was defective. Specifically, although the Board mailed letters to the 38 people who signed a petition and indicated an interest in protesting, this notice contained a typographical error in the address of the location of the "roll call" hearing: it listed the address as "2000 1th Street, N.W." instead of the correct "2000 14th Street, N.W."¹ Petitioners assert that the Board's defective notice violated their constitutional right to due process,² and violated various provisions of the D.C. Code that require proper notice of administrative proceedings.

We agree with the Board that petitioners lacked standing to challenge the adequacy of notice.³ It is black letter law that in order to have standing, a plaintiff must be able to claim "actual injur[y]... not [a] generalized grievance[]." *York Apartments Tenants Ass'n v. District of Columbia Zoning Comm'n*, 856 A.2d 1079, 1084 (D.C. 2004). Petitioners could claim no injury from the typographical error in the Board's letter since they all appeared or sent a representative to the roll call hearing.

Moreover, this is not a circumstance where the petitioners who received "actual notice" have standing to challenge an injury to unnotified individuals. *Cf. Kopff v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1383

¹ In their brief, petitioners challenge the adequacy of the Board's notice on two additional grounds. However, there is no indication in the record that these arguments were made to the Board, neither of these issues was raised in the petition for review filed with this court on July 20, 2011, and neither of these issues is argued in any detail in petitioners' brief. We deem these issues waived and do not address them.

² Petitioners cited to the Fourteenth Amendment to the Constitution. We understand them to raise their due process claims under the Fifth Amendment. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954), *supplemented sub nom. Brown v. Bd. of Educ.*, 349 U.S. 294 (1955) (The Fourteenth Amendment applies only to the states; District of Columbia residents enjoy the protections of the Fifth Amendment.).

³ We review this issue of law *de novo*. *Randolph v. ING Life Ins. & Annuity Co.*, 973 A.2d 702, 705 (D.C. 2009) (citing *Board of Dirs., Wash. City Orphan Asylum v. Board of Trs., Wash. City Orphan Asylum*, 798 A.2d 1068, 1074 (D.C. 2002)).

(D.C. 1977) (rejecting the argument that “actual notice to the petitioners cured, as to them, any failure to give notice” to others; “[w]e cannot expect unnotified individuals to petition for review of an ABC Board decision of which they still may not be aware.”). No argument has been made that the Board failed to issue a notice of the roll call hearing to the 38 people, who by signing the petition, indicated an interest in attending the hearing. And no argument has been made that the notice the Board sent was misaddressed such that those individuals did not receive it. Rather, the argument appears to be that the potential protesters received the notice, but because of a typographical error in the location of the hearing, may have gone to the wrong place, or may not have known where to go. Under such circumstances, it is not unreasonable to require these individuals to exercise their own rights and challenge the adequacy of notice, if indeed it was inadequate.⁴

For the foregoing reasons, the judgment of the Alcoholic Beverage Control Board is

Affirmed

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

⁴ We note that the notice was mailed on Board letterhead, which correctly lists the address at the bottom of the page. Moreover, the address listed was obviously incorrect — in the English language the number one is followed by “st” not “th.” Finally, petitioners themselves were apparently able to discern the location of the roll call meeting from the notice that they received.

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