

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

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In the Matter of:	)	
	)	
Project D.C. Events LLC	)	Case No.: N/A
Event: The Shamrock Crawl	)	License No: N/A
Event Date: March 12, 2016	)	Order No: 2016-075
	)	
Application for a Pub Crawl	)	

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**BEFORE:** Donovan Anderson, Chairperson  
Nick Alberti, Member  
Mike Silverstein, Member  
Ruthanne Miller, Member  
James Short, Member

**ALSO PRESENT:** Project D.C. Events LLC, Applicant  
  
Andrew Kline, Counsel on behalf of the Applicant  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**ORDER DENYING MOTION FOR RECONSIDERATION**

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**INTRODUCTION**

On February 10, 2016, the Alcoholic Beverage Control Board (Board) previously denied the Pub Crawl Application (Application) filed by Project D.C. Events LLC (Applicant) based on concerns regarding litter, overcrowding, and compliance with the Application requirements. *In re Project D.C. Events LLC, The Shamrock Crawl*, Board Order No. 2016-053, ¶ 6. (D.C.A.B.C.B. Feb. 10, 2016).

The Applicant, through counsel, filed a Motion for Reconsideration (Motion). *Mot. for Recon.*, at 1. The Motion argues the following: (1) the Board violated the District of Columbia Administrative Procedure Act by holding a fact finding instead of contested hearing, *id.* at 2; (2) the Board contravened the precedent set in *Risky Ventures*, *id.* at 3; (3) the Applicant was not aware that it had to comply with the new pub crawl rules, *id.*; and (4) the Board's decision to deny the pub crawl based on overcapacity is not supported by substantial evidence. On Friday, February 12, 2016, the Applicant filed a litter removal contract with the Board by email. *Id.* at Attachment. It should be noted that while the Applicant filed a litter plan with its Motion, the

body of the motion does not explain the purpose of the submission, request an amendment to the Application, or address the Board's reasoning based on the lack of submission of a litter plan.

The Motion merits denial because it does not address the threshold issue of whether the Applicant filed an adequate and compliant litter control plan. Therefore, for this and other reasons, the Board affirms its prior Order.

### FINDINGS OF FACT

In reviewing the Applicant's motion, the Board considered the following facts:

1. On January 27, 2016, ABRA sent a letter to the Applicant on behalf of the Board. *Letter from Danette Walker, Legal Administrative Specialist, to Michael Bramson & Alex Lopez* (Jan. 27, 2016). The letter indicated that the Board requested a Fact Finding Hearing related to the Application. *Id.* The letter then indicated that the Board would "discuss the particulars of the event you are hosting. The Board requires this hearing to ensure that the operations of the event will be managed pursuant to the laws and regulations that govern ABC licenses." *Id.* After the Fact Finding Hearing, the Board issued an Order that denied the Applicant's Pub Crawl Application on February 10, 2016. *In re Project D.C. Events LLC*, Board Order No. 2016-053, at 3. The denial was based on the Board's concern regarding the amount of people attending the event and the failure to file an adequate or compliant litter control plan. *Id.* at ¶ 6.
2. The emergency rules enacting the new pub crawl regulations went into effect on January 13, 2016. *Id.*, at ¶ 4. The Applicant filed the Application on January 15, 2016—two days later. *Pub Crawl Application*, Project DC Events LLC, 1 (Date Stamp). The Application did not contain a litter control plan or an approval from the District of Columbia Department of Public Works. *Id.* The Applicant only filed a litter control plan with the Board on February 12, 2016 as part of its Motion. *Mot. for Recon.*, at Attachment. The Applicant also provided no additional affidavits with the Motion.
3. The Fact Finding Hearing in this matter occurred on February 3, 2016. Extra Clean Inc. dated their cleaning proposal sent to the Applicant February 2, 2016. *Contract Between Extra Clean Inc. and Project DC Events*, 1 (February 2, 2016). The Applicant indicates that it accepted the proposal on February 10, 2016. *Id.* (Signature).
4. The Application indicates that the event will run from 2:00 p.m. to 10:00 p.m. on March 12, 2016. *Pub Crawl Application*, at Attachment (Number 4). The contract for cleaning services with Extra Clean, Inc. allows for cleanup between 7:00 a.m. and 11:00 a.m. on March 13, 2016. *Contract Between Extra Clean Inc. and Project DC Events*, (Accepted Feb. 10, 2016). If the contractor performing the cleaning services finishes after 10:00 a.m. the next day, this will mean that all litter will not be removed within twelve hours of the event.

### CONCLUSIONS OF LAW

5. The Board denies the Motion for the following reasons: (1) the Motion fails to properly address the failure to file an appropriate and compliant litter control plan as a basis for denial,

which is fatal to the Application; (2) the Applicant is not entitled to a contested hearing under the D.C. Administrative Procedure Act (DCAPA) when it does not contest the Board's determination regarding a threshold issue required for approval; (3) the Applicant's knowledge or awareness of the new pub crawl rules that became effective before the filing of the Application is irrelevant; (4) the Applicant's reliance on *Risky Ventures* is misplaced and supports the Board's actions in this matter; (5) the Board has the authority to deny an Application based on a review of the Application alone or after an "uncontested" Fact Finding in accordance with § 712.2 of the new rules and 23 DCMR § 1611.1; (6) the Board's determination regarding capacity was reasonable in light of the dangerous conditions that were created during pub crawls occurring last Halloween; and (7) even if the Board accepted the newly submitted litter plan and contract filed by the Applicant, the Application still merits denial because it does not comply with §§ 712.5, 712.7(b) and 712.9.

**I. The Motion fails to challenge the threshold issue of whether the Applicant filed an appropriate and compliant litter control plan, which is fatal to the Application.**

6. The Applicant's Motion fails to address the threshold issue of providing an adequate and compliant litter control plan with its Application. Because the litter control plan is required for approval, the Board affirms its previous denial of the Application.

7. "A petition for reconsideration . . . of a decision or order of the Board may be filed by a party within 10 days after the date of receipt of the Board's final order." D.C. Official Code § 25-433(d)(1). Under § 1719.3, "A petition for reconsideration shall state briefly the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought." 23 DCMR § 1719.3 (West Supp. 2016). Furthermore, under § 1719.4, "If a petition . . . [raises] a new matter, that matter shall be [described] in an affidavit and . . . accompanied by a statement that the petitioner could not by due diligence have known or discovered the new matter . . . [before] the case was presented to the Board . . . ." 23 DCMR § 1719.4 (West Supp. 2016).

8. In this case, the Board explained that it denied the Application, in part, because the Applicant failed to file an "adequate or compliant litter control plan." *In re Project D.C. Events LLC*, Board Order No. 2016-053, at ¶ 6. Nevertheless, in its Motion, the Applicant does not explain how the Board's decision related to the litter plan was "erroneously decided" in accordance with § 1719.3. *Mot. for Recon.*, 1-4. Furthermore, the contract filed with the Motion indicates that it was issued on February 2, 2016, one day before the Fact Finding Hearing on February 3, 2016. In accordance with § 1719.4, the Applicant has not included an affidavit explaining why this contract was not provided with the Application, provided at the Fact Finding Hearing, or otherwise provided before the Board issued its denial. *Id.*; *supra*, at ¶¶ 1-3. Due to the Applicant's failure to challenge the Board's decision related to the litter plan under § 1719, the Board is not required to reconsider its decision regarding the litter plan or the newly filed litter control contract.

9. This failure is fatal to the Motion, because under the pub crawl rules, the Applicant had to submit a "plan for litter prevention, control and removal . . ." *Notice of Emergency and Proposed Rules*, § 712.5(f) (Jan. 13, 2016) [*Emergency Rulemaking*]. As such, the Board finds no cause to overturn its prior decision. Moreover, it should also be noted that the failure to raise

the issue of the litter plan in its Motion, renders the issue waived in this forum. *N. Lincoln Park Neighborhood Ass'n v. Alcoholic Beverage Control Bd.*, 666 A.2d 63, 66 n. 5 (D.C. 1995) (saying appellate review appropriate because the party preserved issue by raising it in their motion for reconsideration filed with the Board).

**II. The Applicant is not entitled to a contested Fact Finding Hearing under the DCAPA when it does not contest the Board's determination regarding the litter control plan.**

10. In its Motion, argues it is entitled to a contested hearing, but does not challenge the Board's determination regarding its inadequate and noncompliant litter control plan. *Mot. for Recon.*, at 1-4. As noted above, the Board cannot approve an Application that does not contain an adequate or compliant litter control plan. *Supra*, at ¶ 9. While § 2-509 requires certain minimum procedures in contested cases, § 1718.2 only requires "findings . . . on contested issues of fact." D.C. Official Code § 2-509; 23 DCMR § 1718.2 (West Supp. 2016). Because the Applicant does not challenge this basis for the decision, a threshold matter required for approval remains uncontested, which renders any further proceedings in this matter moot and unnecessary. *Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact."); 23 DCMR § 1718.2 (West Supp. 2016).<sup>1</sup> Therefore, the Board has no obligation to hold additional proceedings in this matter.

**III. The Applicant's knowledge of the new pub crawl rules that became effective before the filing of the Applicant is irrelevant.**

11. In its Motion, the Applicant claims that Project D.C. Events was not aware that it had to comply with the new pub crawl rules when it applied. *Mot. for Recon.*, at 3. This argument is flawed for two reasons.

12. First, ignorance of the law is no defense. *In re Shaw's Tavern. LLC. t/a Shaw's Tavern*, Case No. II-CMP-00314, Board Order No. 2011-458, ¶ 27 (D.C.A.B.C.B. Nov. 2, 2011) citing *McIntosh v. Washington*, 395 A.2d 744, 756 (D.C. 1978). In this case, the rules went into effect on January 13, 2015, and the Application was submitted on January 15, 2015—two days later. Based on the date of submission, the present Application falls firmly within the scope of the new rules; therefore, the Applicant's state of mind or knowledge when the Application was submitted is irrelevant.

13. Second, even if ignorance were an excuse, the Board does not credit the Applicant's contention that it was ignorant. In the letter advising the Applicant of the Fact Finding Hearing, it was told that the Board would review the "particulars of the event" and that the Board wanted to "ensure that the operations of the event" would be "managed pursuant to the laws and regulations governing ABC licenses." *Supra*, at ¶ 1. The contract submitted by the Applicant further shows that the Applicant solicited a litter removal control from Extra Clean Inc., before the February 3, 2016 Fact Finding Hearing. *Contract Between Extra Clean Inc. and Project DC*

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<sup>1</sup> Alternatively, it could also be argued that reconsideration procedures found at § 1719 satisfy D.C. Official Code § 2-509, because the Applicant is afforded notice of the issues through the issuance of the prior order and has the opportunity to present evidence and argument through the filing of the reconsideration motion.

*Events*, (The box labeled “Date:” indicates the contract was issued on February 2, 2016); *Mot. for Recon.*, at 3. As a result, the record shows that the Applicant was preparing to comply with the new rules before the hearing; yet, chose not to submit evidence of its compliance until it filed its Motion. Thus, the Applicant knew or should have known that it had to comply with the new rules as a condition for receiving approval for the proposed event.

#### **IV. The *Risky Ventures* case demonstrates that the Board may deny an Application after a Fact Finding Hearing.**

14. The Board is also not persuaded by the Applicant’s misreading of the *Risky Ventures* decision. *Mot. for Recon.*, at 2. In *Risky Ventures*, the Board issued a final order denying a license application for a New Retailer’s Class CR license, but, in the order, offered to convert it into a proposed order if a timely request for a hearing was filed. *In re Toran Investment Group, Inc., t/a Risky Ventures*, ABRA License No. 2015-263, 4 (D.C.A.B.C.B. Mar. 25, 2015). In that case, the record shows that the Board denied the Application after holding a Fact Finding Hearing on March 4, 2015. *Id.* at 2. Then, upon receipt of a request a hearing, the Board later issued an order converting the final order into a proposed order for the purpose of allowing the Applicant to make his case. *In re Toran Investment Group, Inc., t/a Risky Ventures*, ABRA License No. 2015-263, at 1-2 (D.C.A.B.C.B. May 13, 2015). In the Applicant’s Motion, the Applicant, citing *Risky Ventures*, states, “the Board’s established precedent precludes it from denying an application following a fact finding hearing” and that in *Risky Ventures* the Board vacated its decision.” *Mot. for Recon.*, at 2. Yet this contention is wrong, because the Board issued a final order denying the Application after the Fact Finding Hearing and only converted the order into a proposed order upon the receipt of a request for a hearing. Therefore, the Applicant’s characterization of the case is quite mistaken, because *Risky Ventures* shows that the Board has previously denied an application after an “uncontested” Fact Finding Hearing.<sup>2</sup>

#### **V. The Board has the discretion to render a decision on an Application after a Fact Finding or based on a review of the Application itself.**

15. The Board is entitled by its regulations to hold a Fact Finding Hearing before issuing a final decision on the Application. Moreover, the Board may even deny an Application based on a review of the Application alone. Under the regulations, “The Board may conduct a hearing for purposes of considering the Promoter/Organizer’s subsequent Pub Crawl Event Form submission.” *Emergency Rulemaking*, at § 712.2. The regulations further states that “The issuance of a pub crawl license shall be solely in the Board’s discretion. The Board shall approve or deny a pub crawl application no less than fourteen (14) days prior to the date of the pub crawl event.” *Id.* at § 712.18. Furthermore, as noted in § 1611.1, “Prior to rendering a final decision on a licensing request or an ABRA Investigative Report, the Board may hold a fact-finding hearing to obtain further information from an applicant or licensee.” 23 DCMR § 1611.1 (West

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<sup>2</sup> The Board has denied applications after an “uncontested” Fact Finding Hearing in other cases as well. *In re H & R, LLC, t/a Exotic Hookah Lounge*, ABRA License No. 97382, Board Order No. 2015-388, 1-2 (D.C.A.B.C.B. Aug. 12, 2015) (The Board denied the application after a Fact Finding Hearing based on the applicant’s failure to submit information requested by the Board in a timely manner); *In re City Corner, Inc., t/a City Corner Market*, ABRA License No. 094587, Board Order No. 2015-361 (D.C.A.B.C.B. Jul. 15, 2015) (The Board denied the application due the applicant’s location in a residential zone in violation of D.C. Official Code § 25-336(a)).

Supp. 2015). In this case, the Board is not persuaded by the Applicant's argument, because the holding of a hearing is discretionary and the Board may approve or deny the Application based on the Application alone. Therefore, the Board is satisfied that this matter has been conducted appropriately.

**VI. The Board's determination regarding capacity was reasonable in light of city's experience with prior events in the proposed neighborhood.**

16. Based on the major crowd control issues that occurred last Halloween, the Board could reasonably determine that a pub crawl with more than 3,000 people in the same neighborhood threatened public safety. *In re Project D.C. Events LLC*, Board Order No. 2016-053, at ¶¶ 1, 3. The Board is not obligated to engage in a guessing game or trial and error with potential crowd size when the safety of police officers and the public is in the balance.

**VII. Even if the Board accepted the litter plan, it fails to comply with §§ 712.5, 712.7(b) and 712.9.**

17. The Board further denies the Application, because the Applicant has not filed its litter control plan with the appropriate District agencies and the contract fails to indicate that the Applicant will comply with the litter removal time limits.

18. Under § 712.5, the Applicant must file a "plan for litter prevention, control and removal" that includes "proof of signed contracts between the "Promoter . . . and litter removal vendors." *Emergency Rulemaking*, §§ 712.5, 712.5(f), 712.7(a). The new regulations, in §§ 712.5, 712.5(f), and 712.9, require the Applicant to file the plan with the Board, but the regulations also require the plans to be filed with the Metropolitan Police Department (MPD) and require approval by the Department of Public Works (DPW). *Id.* at §§ 712.5, 712.5(f), 712.9. Sections 712.5 and 712.7 further require that the pub crawl event form, the litter control plan, and accompanying materials be filed with the Board and MPD forty-five days before the event. *Id.* at §§ 712.5, 712.7. Finally, the regulations, in § 712.7(b), require that all litter removal must be completed within twelve hours of the event. *Id.* at § 712.7(b).

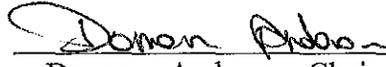
19. As of the date of this Order, the Applicant has not demonstrated that the plans have been filed with MPD or submitted and approved by DPW. Even if the Applicant had done so, by filing the litter control contract on February 12, 2016, the Applicant has no means of complying with the forty five day submission requirement. *Supra*, at ¶ 1. Moreover, the Applicant has also indicated that the event will end at 10:00 p.m., which means that litter must be removed by twelve hours later, or, in other words, 10:00 a.m. the next day *Supra*, at ¶ 4. Nevertheless, the contract indicates that litter removal may not be completed until 11:00 a.m., which exceeds the time limit set by § 712.7(b).

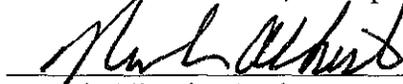
20. As a result, the Board will not approve the Application when the Applicant has not timely filed the litter control plan with the appropriate District agencies in compliance with §§ 712.5, 712.5(f), or 712.9. Moreover, the Board will not approve the plan when it does not promise compliance with the litter removal time limit set by § 712.7(b).

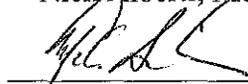
## **ORDER**

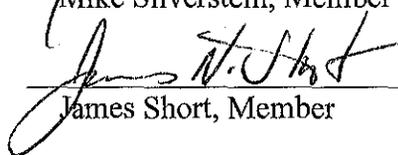
Therefore, for the above stated reasons, the Board, on this 17th day of February 2016, **DENIES** the Motion for Reconsideration. The ABRA shall deliver copies of this Order to the Applicant.

District of Columbia  
Alcoholic Beverage Control Board

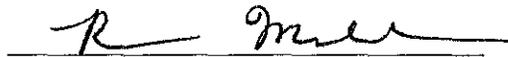
  
Donovan Anderson, Chairperson

  
Nick Alberti, Member

  
Mike Silverstein, Member

  
James Short, Member

I dissent from this order.

  
Ruthanne Miller, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719..1 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).