

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

In the Matter of:

Badsri Incorporated
t/a 4 Seasons Convenience Store

Applicant for a New
Retailer's Class B License

at premises
4975 South Dakota Ave., N.E.
Washington, D.C. 20017

Case No.: 18-PRO-00038
License No.: ABRA-109434
Order No.: 2018-408

Bernard Dietz, Counsel, on behalf of Badsri Incorporated, Inc., t/a 4 Seasons
Convenience Store, Applicant

Ronnie L. Edwards, Chairperson, Advisory Neighborhood Commission 5A, Protestant

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Donald Isaac, Member
Bobby Cato, Member
Rema Wahabzadah, Member

ORDER GRANTING ANC 5A'S MOTION FOR REINSTATEMENT

Badsri Incorporated, t/a 4 Seasons Convenience Store ("Applicant") applied for a new Retailer's Class B License. *ABRA Licensing File; License Application*. Advisory Neighborhood Commission (ANC) 5A filed a protest, challenging the application on the grounds that it would have an adverse impact on the peace, order, and quiet the community, including increased vehicular and pedestrian traffic. *ABRA Protest File, Case No. 18-PRO-00038; ANC 5A Protest Petition*, at 2 (May 18, 2018).

On June 6, 2018, the Alcoholic Beverage Control Board ("Board") dismissed ANC 5A's protest due to its failure to appear at the Roll Call Hearing (Hearing). *In the*

Matter of Badri Incorporated, Inc., t/a 4 Seasons Convenience Store, Case No. 18-PRO-00038, Board Order No. 2018-379, at 1 (D.C.A.B.C.B. June 6, 2018).

On June 14, 2018, ANC 5A filed a Motion for Reinstatement (Motion) with the Board seeking to have its Protest reinstated. *ABRA Protest File, Case No. 18-PRO-00038; Motion for Reinstatement*, at 1 (June 13, 2018). The Applicant did not file a response to ANC 5A's Motion making this matter ripe for the Board's review.

A. ANC 5A HAD GOOD CAUSE FOR FAILING TO ATTEND THE ROLL CALL HEARING

When the Board dismisses a protest due the protestant's failure to appear at the Roll Call Hearing, either in person or by a representative, the Board may reinstate the protest if it finds the protestant demonstrates good cause for its failure to appear. 23 DCMR § 1603.4 ("Failure to appear in person or through a designated representative at the roll call hearing may result in the . . . dismissal of a protest, unless, in the discretion of the Board, good cause is shown for the failure to appear.") "Good cause" includes, but is not limited to, "sudden, severe illness or accident." *Id.* at § 1603.4(a).

In support of its Motion, the ANC contends that Chairperson Ronnie L. Edwards, the ANC's Designated Representative, experienced a family medical emergency while on vacation out of town. *ABRA Protest File, Case No. 18-PRO-00038; Motion for Reinstatement*, at 2 (June 13, 2018). Due to the emergency, Chairperson Edwards was unable to return to the District of Columbia until after the Roll Call Hearing. *Id.* Thus, the Board finds that ANC 5A has demonstrated good cause for its failure to appear at the Hearing.

B. ANC 5A'S ALTERNATE DESIGNATED REPRESENTATIVE WAS PRESENT AT THE ROLL CALL HEARING

Notwithstanding the Chair's failure to appear, another ANC Commissioner, Grace Lewis, was present at the Roll Call Hearing and should have been recognized as a legitimate representative of the ANC protest.

Persons or groups protesting an ABC license application are required to attend the Roll Call Hearing, either in person or by a representative. 23 DCMR § 1603.2. An Advisory Neighborhood Commission "may designate any member or every member to represent the Commission in the protest process," including at the Roll Call Hearing. 23 DCMR § 1603.3.

In the present case, the Board dismissed ANC 5A's protest due to its failure to appear at the Hearing. Upon further review of the record, however, the Board finds that ANC 5A did attend the hearing and that its protest should not have been dismissed.

ANC 5A's protest letter designated the chairperson, Commissioner Edwards, and/or Commissioner Grace J. Lewis, as its authorized representatives. *ABRA Protest*

File, Case No. 18-PRO-00038; ANC 5A Protest Petition, at 2. Although Commissioner Edwards was not present at the hearing, Commissioner Lewis was in attendance on behalf of another protestant group. *Transcript [Tr.]*, at 4. As such, she should have been recognized as a representative of the ANC protest because neither Title 25 of the D.C. Official Code nor Title 23 of the DCMR preclude an individual from representing more than one protest group or entity before the Board.

At the Hearing, Commissioner Lewis identified herself as a member of the ANC and inquired about representing ANC 5A in Chairperson Edwards' absence. *Tr.* at 7. Commissioner Lewis' should have been recognized at the Roll Call Hearing as a representative of the ANC.

For the aforementioned reasons, the ANC 5A's protest should be reinstated.

Accordingly, it is this 27th day of June, 2018, **ORDERED** that:

1. ANC 5A's Motion for Reinstatement is **GRANTED**.
2. **It Is Further Ordered** that the Protest Status Hearing is rescheduled for July 11, 2018 at 9:30 a.m., and the Protest Hearing is scheduled for August 1, 2018 at 1:30 p.m. Failure to attend either hearing may result in the dismissal of the application or the protest.
3. Copies of this Order shall be sent to Counsel for the Applicant and ANC 5A, Protestant.

District of Columbia
Alcoholic Beverage Control Board

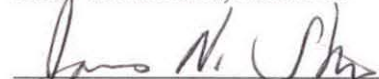


Donovan Anderson, Chairperson



Nick Alberti, Member

Mike Silverstein, Member



James Short, Member

Donald Isaac, Member



Bobby Cato, Member

Rema Wahabzadah, 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, 2000 14th Street, N.W., Suite 400S, Washington, DC 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 (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).