

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

---

In the Matter of:	)	
	)	
	)	
Ghost Lounge, LLC	)	Case No.: 22-PRO-00099
t/a Cloak & Dagger	)	License No.: ABRA-098733
	)	Order No.: 2022-922
Application to Renew a	)	
Retailer's Class CT License	)	
	)	
at premises	)	
1359 U Street, N.W.	)	
Washington, D.C. 20020	)	

---

**BEFORE:** Donovan Anderson, Chairperson  
James Short, Member  
Bobby Cato, Member  
Rafi Aliya Crockett, Member  
Jeni Hansen, Member  
Edward S. Grandis, Member

**ALSO PRESENT:** Ghost Lounge, LLC, t/a Cloak & Dagger, Applicant  
  
Matthew T. Minora, Counsel, on behalf of the Applicant  
  
Sabel Harris, Commissioner, Designated Representative, Advisory  
Neighborhood Commission (ANC) 1B, Protestants  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

---

**ORDER DENYING APPLICANT'S MOTION TO DISMISS THE PROTEST**

---

Ghost Lounge, LLC, t/a Cloak & Dagger (Applicant) filed an Application to Renew its Retailer's Class CT License. The license was protested by Advisory Neighborhood Commission (ANC) 1B, which filed a timely protest letter on various protest grounds recognized by Title 25 of the D.C. Official Code, including peace, order, and quiet; real property values; and residential parking needs, among other grounds. *Protest Letter from ANC 1B (Cloak and Dagger)*.

Subsequently, the Applicant has moved for the dismissal of the protest. The Applicant argues that the grounds stated in the protest letter are pretextual and insincere. *Motion to*

*Dismiss Protest of Advisory Neighborhood Commission 1B* at 1 [*Motion*]; *Reply to ANC 1B's Response to Motion to Dismiss Protest* at 2. In support of its position, the Applicant argues that supporting statements made at the protest vote demonstrate that the ANC's protest is baseless. *Motion*, at 2. The ANC responded by noting that the Applicant cites no authority to support its position, and the fact that the Board has previously approved similar protest letters.

The Board finds in favor of ANC 1B for several reasons. First, the Applicant has failed to cite any law, regulation, or analogous judicial decision that would permit the Board to inquire into whether an Applicant's stated protest grounds are insincere and pretextual, whether that alone is sufficient to merit dismissal of the protest, and whether an ANC must actually make a factual showing before voting on a protest letter. Second, the inquiry proposed by the Applicant appears to run contrary to case law barring the Board from "review[ing] the validity of [a] coordinate agency's action" where the Applicant proposes that the Board review the validity of the ANC's vote. *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 588 (D.C. 1998) citing *Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 413 A.2d 152, 154 (D.C.1980).<sup>1</sup> Third, the Board is also not persuaded that the ANC must provide any factual predicate before it votes. As the Board noted in *A & S Grocery*,

. . . [T]here is no requirement in Title 25 of the D.C. Official Code that a protestant plead their entire case or provide all evidence in support of their position with their initial protest letter. Instead, pursuant to § 25-602(a), it is sufficient that the protest letter states the protestant's "intention to object and the grounds for the objection." D.C. Code § 25-602(a). As such, the motion to dismiss is premature where the parties still have the opportunity to make a full evidentiary presentation at a protest hearing and the motion raises question of fact that can only adjudicated at a full hearing.

*In re TGW Convenience Store, LLC, t/a A & S Grocery*, Case No. 21-PRO-00003, Board Order No. 2021-378, 2 (D.C.A.B.C.B. Jun. 29, 2021). As a result, a plain statement of the protest grounds is sufficient to maintain standing and there is no need for any protestant, including the ANC, to plead their case before the protest hearing.

On a final note, even if the Applicant's position regarding the Board's authority to dismiss the case were correct, the Board disagrees with the Applicant's interpretation of the facts. First, the Applicant cites a statement at the meeting where one commissioner stated that "the trash" at the premises is "pretty good on that front." *Motion*, at 2-3. The Board notes that "pretty good" is not *perfect*; therefore, there is nothing definitive in such a statement.<sup>2</sup> Indeed, there is nothing wrong or immoral with a protestant party agreeing that renewal is warranted, and that the protest need only focus a few specific issues or potential conditions. Second, it is questionable whether the ANC's discussion of its settlement discussions and tactics are eligible for consideration as evidence for the purposes of dismissal or at trial. *Lively v. Flexible*

---

<sup>1</sup> In these types of situations, a party raising claims that cannot be addressed by the Board under *Kopff* likely needs to raise their issue with the acting governmental body or a court with general jurisdiction over the body.

<sup>2</sup> For example, the statement "pretty good" could encompass a licensee that does an excellent job keeping its containers closed and maintaining its trash area but generates occasional minor complaints regarding the hour of bottle disposal at the establishment.

*Packaging Ass'n*, 930 A.2d 984, 994 (D.C. 2007), *as amended* (Aug. 30, 2007) (“that as a general rule, statements and admissions made by a party during the course of settlement negotiations are not admissible at trial”). Third, given that the appropriateness standards are so broad, the Applicant’s statement that the claim is baseless is not apparent from the record. Indeed, if the ANC has a proposed settlement in mind, this implies the existence of specific matters that could be imposed by the Board to potentially address the protest grounds raised by the ANC and also demonstrates its sincerity.

### **ORDER**

Therefore, for these reasons, on this 30th day of November 2022, the Board **DENIES** the Applicant’s motion to dismiss the protest filed by the Applicant. A copy of this Order shall be provided to the parties.

District of Columbia  
Alcoholic Beverage Control Board

eSigned via SeamlessDocs.com  
*Donovan Anderson*  
Key: ac43cb09b69d5f09e4b730663d1dccc8

---

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com  
*Donovan Anderson*  
Key: 547ac373820de6ac8d1b3325d2948ec

---

James Short, Member

eSigned via SeamlessDocs.com  
*James Short*  
Key: 258d3fca0fbc148d7f4b75bd7917d20d

---

Bobby Cato, Member

eSigned via SeamlessDocs.com  
*Rafi Aliya Crockett, Member*  
Key: b560e91845e1f9e4016155e5c12781cc

---

Rafi Crockett, Member

eSigned via SeamlessDocs.com  
*Jeni Hansen, Member*  
Key: 82172931f0509447491b56f9c2a4189f

---

Jeni Hansen, Member

eSigned via SeamlessDocs.com  
*Edward Grandis, Member*  
Key: 5027bda7f9f0040ec14adeb52541ce5

---

Edward S. Grandis, 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).