

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

In the Matter of:)
)
Foggy Bottom Grocery, LLC) Case No.: 17-PRO-00086
t/a FoBoGro) License No.: 082431
) Order No.: 2018-062
Applicant for to Renew a)
Retailer’s Class B License)
)
at premises)
2140 F Street, N.W.)
Washington, D.C. 20037)
)

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

PARTIES: Foggy Bottom Grocery, LLC, t/a FoBoGro, Applicant

Ed Grandis, Counsel, on behalf of the Applicant

Patrick Kennedy, Advisory Neighborhood Commission 2A, Protestant

Barbara Kahlow, West End Citizens Association, Protestant

**ORDER DENYING IN PART AND GRANTING IN PART APPLICANT’S MOTION TO
DISMISS**

On January 30, 2018, Foggy Bottom Grocery, LLC, t/a FoBoGro, (Applicant) filed a motion with the Alcoholic Beverage Control Board to dismiss the protests filed by Advisory Neighborhood Commission (ANC) 2A and the West End Citizens Association (WECA). The ANC and WECA both filed objections and the Applicant subsequently filed a reply. Based upon the Board’s review of the motions and oral arguments at a hearing on February 14, 2018, the Board denies the motion as to ANC 2A, but grants the motion as to WECA for the reasons stated at the hearing, and for the reasons stated below.

As to the argument regarding the ANC, in pertinent part, the Applicant argues that ANC 2A failed to appear at the Roll Call Hearing on January 8, 2018, and failed to obtain standing.

Mot. to Dismiss, at 2, 5. The factual basis for the Applicant’s argument is that the ANC only designated Commissioners Detrick Campbell and Patrick Kennedy to serve as designated representatives, and that Peter Sacco an employee, could not make an appearance in their place at the Roll Call Hearing, which is what occurred. *Id.* at 2.

The Board disagrees with this argument. As noted in § 1706.5, parties “shall have the right to representation by an attorney or designated representative of his or her choice. 23 DCMR § 1706.5 (West Supp. 2018). First and foremost, the Board fundamentally disagrees with the Applicant that any issue with the ANC’s representation in this case creates a standing issue. Instead, because the ANC filed a valid protest, the sole issue is whether the ANC properly appeared. Second, it is the Board’s interpretation that the authority granted to a representative by Title 23 of the D.C. Municipal Regulations includes the authority to designate substitutes and additional designated representatives as needed. Indeed, in this case, there is no indication in the record that the ANC intended the grant of representation to the commissioners to be exclusive to them; as a result, there is nothing wrong with the commissioners subsequently designating Mr. Sacco as their representative. Consequently, the Board denies the motion to dismiss the ANC on its face, and finds the remaining arguments made by the Applicant to be unpersuasive.

Nevertheless, in contrast to the previous issue, the Board is persuaded by the Applicant that WECA failed to satisfy the standing requirement to become a protestant in this matter. According to the Applicant, WECA made “no mention of or notification of any duly called meeting” where WECA would vote to protest the Application.

Under § 25-601(3)(B),

A citizens association incorporated under the laws of the District of Columbia located within the affected area; provided, that the following conditions are met: . . . (B) A resolution concerning the license application has been duly approved in accordance with the association's articles of incorporation or bylaws at a duly called meeting, with notice of the meeting given to the voting body and the applicant at least 7 days before the date of the meeting.

D.C. Code § 25-601(3)(B).

As noted in *Watergate*, “standing is jurisdictional and cannot be waived.” *In re Watergate Hotel Lessee, LLC, t/a Watergate Hotel*, Case No. 16-PRO-00085, Board Order No. 2016-706, 2 (D.C.A.B.C.B. Dec. 14, 2016). Consequently, WECA cannot be granted standing as a protestant if it did not notify the Applicant of the meeting where it approved the resolution regarding the Application at least seven days prior to the meeting. § 25-601(3)(B). Moreover, WECA cannot be granted standing if the “duly called meeting” does not comply with the association’s bylaws and articles of incorporation. *Id.*

According to WECA’s initial protest letter, the organization “passed a resolution to protest the Renewal Application” on December 6, 2017.¹ *WECA Protest Letter*, at 1. Based on

¹ It should be noted that ABRA’s website states the following in regards to standing as a citizens association, “The association provides notice of the meeting where the protest will be discussed to the applicant at least seven days

the Board's review of WECA's communication with Steurt Martens and the certified letter submitted by WECA, there is no mention of the December 6, 2017, meeting. Instead, the communications sent to the Applicant merely suggest dates for a meeting and do not apprise the Applicant of the December 6 meeting where the resolution to protest would be taken up. *WECA Response*, at 5; *WECA Certified Letter*, at 1. Moreover, even if the meeting on December 5, 2017, is relied upon, WECA cannot substantiate that it constituted a duly called meeting. During the hearing, WECA's representative indicated that WECA requires a quorum of three to constitute a meeting, but the meeting that occurred between WECA and the Applicant's agents occurred with only two WECA members present. Under these circumstances, the Board agrees with the Applicant that WECA failed to fulfill the requirements to obtain standing under § 25-601(3)(B).

ORDER

Therefore, for the above stated reasons, on this 14th day of February 2018, the Board **GRANTS** the motion to dismiss WECA filed by the Applicant. The motion to dismiss the ANC is **DENIED**.

IT IS FURTHER ORDERED that the Board finds the remaining issues raised by the parties as moot based on the Board's determination on the merits.

The parties are further **ADVISED** that the Protest Hearing shall occur on March 14, 2018, at 1:30 p.m.

A copy of this Order shall be provided to the parties by ABRA.

prior to the meeting." *File a Protest*, Alcoholic Beverage Regulation Administration, <https://abra.dc.gov/service/file-protest> (last visited Feb. 13, 2018).

District of Columbia
Alcoholic Beverage Control Board

Donovan Anderson, Chairperson

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James Short, Member

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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).