

December 6, 2017, as it stated in its initial Protest Letter. *WECA Mot. for Recon.*, at 7-8; *WECA Protest Letter* (“On December 6, 2017 . . . the West End Citizens Association . . . unanimously passed a resolution to protest the Renewal Application”). As admitted by WECA in its motion, § 25-601(3)(B) required the notice to “specify” the date of WECA’s meeting. *WECA Mot. for Recon.*, at 7. Moreover, the Board is not persuaded that its initial interpretation of the record, that the communications sent the Applicant only “suggest dates for a meeting and do not apprise the Applicant of the” date of the meeting, was wrong. *In re Foggy Bottom Grocery, LLC, t/a FoBoGro*, at 3. As a result, the Board affirms its decision to deny WECA standing as a protestant.

The Board recognizes that WECA has made various arguments unrelated to the issue of standing, including that the application is not complete because the Applicant failed to report its full ownership and sign specific forms under D.C. Official Code § 25-401 and 23 DCMR § 500.1 and that the Applicant has illegally transferred the license to new owners. *WECA Mot. for Recon.*, at 2-3, 9-4. WECA further argues that this requires the replacarding of the Application. *Id.* at 9. Nevertheless, none of these arguments relate to standing; therefore, they have no bearing on whether WECA may remain as a protestant.

While the Board is not required to address the unrelated issues raised by WECA, the Board further notes that under Title 25 of the D.C. Official Code, changing ownership without Board approval is only a violation in some cases. D.C. Code § 25-405. For example, a “voluntary transaction” resulting in a change in control or ownership of the licensee that falls under 50 percent may not have to be pre-approved. § 25-405(a)-(b). Moreover, the Board has never interpreted the “true and actual owner” requirement of D.C. Official Code § 25-301(a)(5) as a total prohibition on management agreements that allow third parties to manage the business on behalf of the ownership.¹ *See also* D.C. Code § 25-301(a)(6) (allowing the ownership to have Board licensed managers superintend the business). As a result, there exist a sufficient number of innocent explanations that argue against hastily upending the Application and determining that the Applicant is in violation of Title 25.

Moreover, the Board is aware that § 500.1 states that “The Board shall not accept as filed, and shall take no action upon, any application that is not complete.” 23 DCMR § 5001 (West Supp. 2018). Nevertheless, even if the Board accepts WECA’s argument, the regulation provides no penalty or instructions as to what action the Board should take on an incomplete application that moved past the placarding stage. In some cases, the Board has required replacarding where the applicant was completely wrong as to an application question that may have discouraged the filing of protests. *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, ABRA License No. 93491, Board Order No. 2014-067, 2-4 (Board ordered replacarding where applicant failed to disclose prior adjudicated violations of Title 25 attributed to previously owned licensed establishment). While in others, the Board has permitted the Applicant to merely amend incorrect information when it did not prejudice the other party. *Kingman Park Civic Association v. D.C. Alcoholic Beverage Control Bd.*, No. 11-AA-831, 7 (D.C. 2012) (saying that the acceptance of an amended application that did not prejudice the petitioner “was within the ambit of the Board’s discretion.”).

¹ In general, in determining the legality of a management agreement, the Board reviews how the agreement addresses issues regarding the operation, management and profits of the business. *See* D.C. Code § 25-101(26).

In this case, any alleged errors in the application had no effect on WECA's ability to file a timely and valid protest. There is also no indication in the record that any third parties that could obtain standing would have filed a protest on the issues raised by WECA.² The Board further notes that if such third parties existed, they already had an opportunity to file a protest based on the alleged lack of completeness of the application or the alleged lack of candor regarding the ownership, if they so desired. Finally, at this stage, any charge that the Applicant has engaged in the illegal transfer of the license is speculative and unconfirmed. As a result, the Board finds no prejudice in refraining from requiring the replacarding of the application and merely allowing the Applicant to amend the application, should any missing material information be discovered.

On a final note, the Board notes that in its review of the Application, it is entitled to credit the information contained within. D.C. Code § 25-311 ("satisfaction of the Board"). Moreover, the Board is not obligated to stay the application process or renewal based on unadjudicated allegations of wrongdoing by protestants and third parties; especially, when such allegations can be addressed by ABRA's enforcement process. D.C. Code §§ 25-823 (permitting the penalization of licensees violating Title 25 and the regulations); 25-829 (permitting the Board to order the cessation of illegal activity); 23 DCMR § 800 (making a violation of § 25-405 a primary tier offense).

ORDER

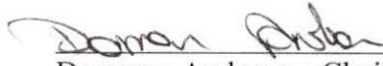
Therefore, for the above stated reasons, on this 28th day of March 2018, the Board **DENIES** the Motion for Reconsideration.

WECA is further **ADVISED** that it retains the ability to file a complaint with ABRA's Enforcement Division, should it so choose. If the allegations have merit, in line with ABRA's regular enforcement process, the Enforcement Division can conduct an appropriate investigation and issue a report that can be reviewed by the Board, the Applicant, and the public. The Board can then take appropriate action based on a developed evidentiary record while according the Applicant appropriate due process.

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

² At the time of the writing of this motion, the Board is aware that the Applicant and the affected ANC have filed a settlement agreement for approval. If approved, the Board notes that third parties seeking standing as a group under D.C. Official Code 25-601(2) would have their protests against the present Application dismissed under D.C. Official Code § 25-609(b).

District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



Nick Alberti, Member



Mike Silverstein, Member



James Short, 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).