DISTRICT OF COLUMBIA COURT OF APPEALS

No. 18-AA-117

GUANGSHA WANG, PETITIONER,

v.

DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE CONTROL BOARD, RESPONDENT,

and

1642 U STREET, INC. D/B/A/ CHI-CHA LOUNGE, INTERVENOR.

On Petition for Review of a Decision of the
District of Columbia Alcoholic Beverage Control Board
(PRO-114-16)

(Submitted January 7, 2019 Decided October 18, 2019)

Before THOMPSON and EASTERLY, *Associate Judges*, and RUIZ, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Guangsha Wang owns and rents the residential unit directly above the premises of 1642 U Street, Inc., which operates a bar under the name Chi-Cha Lounge ("Chi-Cha"). Ms. Wang filed a protest with the District of Columbia Alcoholic Beverage Control Board (the "Board") with respect to Chi-Cha's application for renewal of its retailer class CT alcohol license. The parties reached a settlement agreement on September 7, 2017, contingent on Chi-Cha's completion of sound mitigation work. The Board reviewed the settlement agreement a week later but withheld final approval until the contractor named in the agreement certified that it had completed the sound mitigation work, which it did on November 16, 2017. Accordingly, on December 6, 2017, the Board determined that Ms. Wang's protest should be withdrawn and granted Chi-Cha's application. Thereafter, Ms. Wang filed a Motion for Reconsideration of the December 6 Order and then a Motion to Supplement the Record to the Motion for Reconsideration. The Board denied these motions on January 24, 2017. Proceeding pro se in this court as she did before the Board, Ms. Wang appeals

from the December 6 and January 24 Orders. We affirm.

We begin our analysis with Chi-Cha's argument that Ms. Wang does not have standing to pursue this appeal. Chi-Cha reasons that Ms. Wang has lost her party status since her protest was withdrawn. Whether an individual has standing is a question of law that we review de novo. *Recio v. District of Columbia Alcoholic Beverage Control Bd.*, 75 A.3d 134, 141 (D.C. 2013). There is no question that Ms. Wang has standing to appeal. Ms. Wang, as an "abutting property owner," had standing to protest the issuance of a license to Chi-Cha, D.C. Code § 25-601(1) (2012 Repl.), and was a proper party to the protest hearing, *see* 23 DCMR § 1701.2 (2019). Further, D.C. Code § 25-433(d)(1) provides that a "party" may file a motion for reconsideration of a decision of the Board. Lastly, having received an adverse decision from the agency in a contested case, *see Acott Ventures, LLC v. District of Columbia Alcoholic Beverage Control Bd.*, 135 A.3d 80, 89 (D.C. 2016), Ms. Wang was authorized to seek relief from this court. *See* D.C. Code § 2-510(a) (2016 Repl.) ("Any person . . . adversely affected or aggrieved[] by an order or decision of the Mayor or an agency in a contested case[] is entitled to a judicial review thereof . . . ."); *id.* § 25-431(a); *cf. Proctor v. District of Columbia Rental Hous. Comm'n*, 484 A.2d 542, 548 n.6 (D.C. 1984) (stating that tenants who participated in agency proceedings by objecting to landlord's petition for rent increases "of course[] would have standing to appeal" the agency's rejection of their petitions).

We turn next to Ms. Wang's arguments on appeal. The only preserved claims Ms. Wang pursues in her brief to this court are those arguments raised in her Motion to Supplement the Record to the Motion for Reconsideration; thus we limit our review to the portion of the Board's order denying that motion as moot.[1] Again, our review of this legal question is de novo. *Recio*, 75 A.3d at 141.

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[1] Ms. Wang makes additional arguments for the first time on appeal, including that Chi-Cha committed perjury and that it is not eligible for an alcohol license. We decline to address arguments that were not first presented to the fact-finder. *See Pajic v. Foote Props., LLC*, 72 A.3d 140, 145–46 (D.C. 2013) (explaining that, as an appellate court, our review is generally limited to preserved claims).

In her Motion for Reconsideration, Ms. Wang argued that the Board should not withdraw her protest because Chi-Cha had not fulfilled its obligations under the settlement agreement; specifically, it had failed to provide her with "any evidence" that the soundproofing work had been completed. The Board denied the Motion for Reconsideration because the settlement agreement did not impose any obligation on Chi-Cha to provide Ms. Wang with proof that the soundproofing work had been finished. Additionally, the Board approved the settlement agreement only after Chi-Cha provided a certification to the Board by the contractor that all work was complete. Having made the determination that Chi-Cha was not required to provide this notice to Ms. Wang (which Ms. Wang does not challenge), the Board did not err in concluding that Ms. Wang's Motion to Supplement the Record to her Motion for Reconsideration was moot.

The fact that Ms. Wang's Motion to Supplement the Record did not supplement the record as to the argument she made in her Motion for Reconsideration by supplying any evidence that the certification the Board received was false but instead sought to advance new arguments—that (1) the settlement agreement contained unlawful terms by requiring an (allegedly) unlicensed contractor to complete construction work; and (2) she was misled, in essence, regarding the licensure of the contractor and an audio engineer—does not alter our calculus. Ms. Wang had ten days to file a motion for reconsideration explaining why the Board had reached the wrong result. *See* D.C. Code § 25-433(d)(1). She could not use a motion to supplement her motion for reconsideration, filed nearly one month after the date of the December 6 order, to end-run this time limitation. *See Recio*, 75 A.3d at 143 ("The nature of a motion does not turn on its caption or label, but rather its substance." (quoting *Nuyen v. Luna*, 884 A.2d 650, 654 (D.C. 2005)).[2]

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[2] Even if we could consider the merits of the Motion to Supplement, it would not alter our decision. Ms. Wang did not attach any documents to her Motion to Supplement that corroborate her claims that the contractor was not licensed, building permits were not issued for the soundproofing work, or the settlement agreement itself contained false information. Although she appended to her Reply Brief after-the-fact certifications to support some of these contentions, as an appellate court, we generally do not consider arguments or evidence raised for the first time on appeal or in a reply brief. *See Randolph v. District of Columbia Zoning Comm'n*, 83 A.3d 756, 760 n.4 (D.C. 2014).

For the foregoing reasons, the judgment of the Alcoholic Beverage Control Board is

Affirmed.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo
JULIO A. CASTILLO
Clerk of the Court

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