

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

In the Matter of:)
)
Momentux Hospitality, LLC)
t/a RUSH)
)
Application for a New)
Retailer’s Class CT License)
)
at premises)
1923 9 th Street, N.W.)
Washington, D.C. 20001)
_____)

Case No.: 23-PRO-00061
License No: ABRA-125250
Order No: 2023-537

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

ALSO PRESENT: Momentux Hospitality, LLC, t/a RUSH, Applicant

Richard Bianco, Counsel, on behalf of the Respondent

Zoe Lu, Designated Representative, Group of Five or More Residents and
Property Owners, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER GRANTING MOTION FOR REINSTATEMENT

The above-mentioned Applicant filed a motion for reinstatement after its application was dismissed for failing to appear at a required Protest Status Hearing on October 4, 2023. The Applicant requests in its motion and reply that the failure to appear in this case should be excused for good cause pursuant to 23 DCMR § 1602.3, over the objection of the Protestant.

In this case, the Applicant avers that the web link to the virtual hearing was sent to the firm’s paralegal, who left his firm, and not the Applicant’s counsel, who was listed in the Applicant’s designation form. *Mot. for Reinstatement*, at 1-2. The Board notes that nowhere in the form is the firm’s paralegal selected as an official point of contact. *Id.* at Exhibit A.

The Board finds it reasonable for a party to expect that email communications will be sent to the phone numbers, mailing addresses, and emails provided to the agency. As a matter of due process, when hearing related communications are not sent to the designated locations and recipients, it is not reasonable to presume that appropriate notice has occurred or been completed. Therefore, any absences related to such a failure, whether in whole or in part, should be deemed for good cause and should not lead to dismissal until appropriate notice is achieved.

The Board has further reviewed the arguments presented by the Protestant but finds the arguments unpersuasive where due process and fundamental fairness concerns outweigh the considerations presented by the Protestant. Therefore, the Board grants reinstatement.

ORDER

Therefore, on this 25th day of October 2023, the Board **APPROVES** the Motion for Reinstatement filed by the Applicant. The parties are advised that the Protest Status Hearing is now scheduled for November 8, 2023 at 10:30 a.m. and the Protest Hearing is scheduled for Thursday, December 14, 2023 at 10:00 a.m.

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

District of Columbia
Alcoholic Beverage and Cannabis Board

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac43cb06c6e5f0e4c730003d1dccc8

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com
James Short
Key: 547ae373f820de6ac8d1b3325d2949ec

James Short, Member

eSigned via SeamlessDocs.com
Bobby Cato
Key: 256d3fcaefbe146d7f4b75bd7917d20d

Bobby Cato, Member

eSigned via SeamlessDocs.com
Jeni Hansen, Member
Key: 82172931f0505447491b56ff92a41899

Jeni Hansen, Member

eSigned via SeamlessDocs.com
Edward Grandis, Member
Key: 5027bda7ff9f0040ec14adeb52541ce5

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).