

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

In the Matter of:)	
)	
Trump Old Post Office, LLC, t/a)	Case No.: 19-PRO-00036
Trump International Hotel Washington DC)	License No: ABRA-100648
)	Order No: 2019-656
Application to Renew a)	
Retailer's Class CH License)	
)	
at premises)	
1100 Pennsylvania Avenue, N.W.)	
Washington, D.C. 20004)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member
Rafi Aliya Crockett, Member

ALSO PRESENT: Trump Old Post Office, LLC, t/a Trump International Hotel Washington DC, Applicant

Stephen J. O'Brien, Counsel, on behalf of the Applicant

Joshua A. Levy, Counsel, on behalf of A Group of Five or More Residents or Property Owners, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER GRANTING MOTION TO DISMISS THE PROTEST

The Alcoholic Beverage Control Board grants the motion to dismiss for lack of standing filed by the Applicant, Trump Old Post Office, LLC, t/a Trump International Hotel Washington DC (Applicant), because it has been shown that the purported group of eight residents and property owners does not contain at least five residents or property owners of the District in accordance with D.C. Official Code § 25-601(2).

This matter stems from the Application to Renew a Retailer's Class CH (Hotel) License, which was submitted to the Board by the Applicant. A Notice of Public Hearing advertising the

renewal application was posted on March 29, 2019, and informed the public that any objections to the application could be filed on or before May 13, 2019. *ABRA Protest File No. 19-PRO-00036*, Notice of Public Hearing [*Notice of Public Hearing*].

The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that one group of eight residents and property owners (Group) has filed a protest against the application. *ABRA Protest File No. 19-PRO-00036*, Roll Call Hearing Results. The Group, as presently recognized by the Board, consists of Albert Foer, the Hon. Henry M. Kennedy, the Hon. Joan Goldfrank, the Rev. William Lamar IV, the Rev. Jennifer Butler, Rabbi Aaron Potek, Dr. Timothy Tee Boddie, and Rabbi Jack Moline (collectively the “Group”). *Group Exhibits, Declaration of Albert A. Foer, Signature Page*. Nevertheless, in resolving a dispute over the release of the Group members’ addresses, the Board recently informed the parties that under § 1801.6 the Applicant is entitled to “a fair opportunity to challenge the validity of the petition.” *In re Trump Old Post Office, LLC, t/a Trump International Hotel Washington DC*, Case No. 19-PRO-00036, Board Order No. 2019-467, 4 (D.C.A.B.C.B. Jun. 12, 2019).

The Applicant now takes that opportunity, and moves to dismiss four of the group members and the protest; specifically, the Applicant argues that the Hon. Henry M. Kennedy, the Rev. Jennifer Butler, Dr. Timothy Tee Boddie, and Rabbi Jack Moline do not qualify as residents or property owners, and that this leaves the Group without a sufficient number of members under § 25-602(2). *Mot. to Dismiss Protest Due to Lack of Standing*, at 2-3 [*Mot. to Dismiss*]. The Board heard oral arguments related to the motion on September 18, 2019. After hearing the presentations of the parties, the Board is in agreement with the Applicant that the Group lacks standing.

I. The Group Lacks a Sufficient Number of District Residents and Property Owners to Retain Standing in Accordance with D.C. Official Code § 25-602(2).

The Group’s right to protest is authorized by § 25-601(2), which states that “A group of no fewer than 5 *residents* or *property owners* of the District sharing common grounds for their protest” may protest a renewal application. D.C. Code § 25-601(2) (emphasis added). As noted by the Board previously, a party must retain standing in order to maintain a protest, the issue of standing is a “threshold issue,” and standing may be reevaluated “at any time.” *In re S&A Deli, Inc., t/a Good Hope Deli & Market*, Case No. 14-PRO-00018, Board Order No. 2014-222, 2 (D.C.A.B.C.B. May 15, 2014).

As the present matter is still pending, it is the responsibility of the Group to maintain standing under § 25-601(2). In its motion, the Applicant now makes a prima facie showing that the Group lacks a sufficient number of members to continue. In opposition to the motion, the Applicant argues that Group Member Moline has standing because he is a “subtenant of property in Washington, DC.” *Opposition to Motion to Dismiss Protest Due to Lack of Standing*, at 4 [*Opposition*]. Furthermore, in surreply, the Group admits that Group Members Boddie, Kennedy, and Butler are not currently or no longer residents and provides no evidence that these members own property in the District. *Mot. for Leave to File Surreply Brief in Opposition to Mot. to Dismiss and Surreply Brief in Opposition to Mot. to Dismiss*, at 2 [*Surreply*].

The Board is not persuaded by the Group's argument. Under the plain language of § 25-601(2), a "property owner" means the person or entity that "has the right to possess, use, and convey something" even if they "may have parted with some interests (as by granting an easement or making a lease)." *Black's Law Dictionary* (11th ed. 2019) (OWNER). Consequently, renters, tenants, and other types of leaseholds do not qualify as property ownership because they lack important components of ownership. Furthermore, even if tenancy satisfied the property owner requirement, the Board further credits the Applicant's showing that Group Member Moline is not even a subtenant because he signed the rental agreement on behalf of his employer, not himself. *Reply to Opposition to Mot. to Dismiss Protest Due to Lack of Standing*, at 3. Therefore, Group Member Moline does not qualify as a property owner of the District and must be dismissed.

In light of this determination, the Board is further required to dismiss the protest because the Group lacks the required five members to sustain the protest in accordance with § 25-602(2). The Board notes that the Group raises additional arguments in an effort to save its protest; however, these arguments are equally unpersuasive for the reasons discussed below.

II. The Group is Not Otherwise Entitled to a Hearing on the Issue of Character and Fitness.

Based on the dismissal of the Group, this matter is deemed uncontested and does not require the issuance of findings of fact and conclusions of law. *Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact."); 23 DCMR § 1718.2 (West Supp. 2019). The Group's argument that this matter can only be addressed through a contested hearing with their participation is not supported by any authority. *Opposition*, at 5. As a result, the Board will treat the Application like any other uncontested application for renewal.

III. The Group Lacks Standing to Raise Issues Related to the ANC.

The Board notes that the Group has raised the issue related to the filings of ANC 2C in this case and their right to "great weight" under the law. *Opposition*, at 6-7. Nevertheless, the Group does not represent the ANC and it lacks standing to raise issues on their behalf.

IV. A Show Cause Hearing is Not Available to Adjudicate Matters Falling Under D.C. Official Code § 25-301(a)(1).

The Group maintains that the Board is compelled to hold a show cause hearing related to its complaint under D.C. Official Code § 25-447(c), which provides that

Within 30 days of receiving evidence supporting a reasonable belief that any licensee or permittee is in violation of the provision of this title or the regulations issued under it, the Board shall order the licensee or permittee, by personal service or certified mail, to appear before the Board not less than 30 days thereafter to show cause why the license or permit should not be revoked or suspended, or the licensee or permittee penalized, as provided by

subchapter II of Chapter 8. The notice shall state the time and place set by the Board for the hearing.

D.C. Code § 25-447(c). The Group further argues that it has presented sufficient information to constitute a “reasonable belief” under § 25-447. *Surreply*, at 5.

This argument fails for multiple reasons. First, it is well settled law that “[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.” *Mallof v. Dist. of Columbia Bd. of Elections & Ethics*, 1 A.3d 383, 396 n. 64 (D.C. 2010) *citing Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). No language in § 25-447 suggests that the statute departs from this understanding of standing. Therefore, the Group lacks standing to compel the Board to initiate a show cause hearing or enforcement action. Second, D.C. Official Code § 25-301(a) plainly limits its scope to times when the Board is “issuing, transferring to a new owner, or renewing a license.” D.C. Code § 25-301(a). As a result, as the Group’s desired show cause hearing would occur in the middle of a licensing period, and not relate to those actions listed in § 25-301(a), the Board cannot possibly have a “reasonable belief” that a violation has occurred. This is especially true when the threshold element of a pending licensing determination is not present in a show cause matter.¹ Finally, the Group does not provide any adequate explanation as to why the Board should depart from the qualification hearing statute found at D.C. Official Code § 25-412, which creates a separate hearing process for addressing compliance with § 25-301. Therefore, the Group’s request for a show cause hearing cannot be granted.

V. This Order Satisfies the Great Weight Requirement.

The Board recognizes that ANC 2C filed a recommendation in this case. Under the law, an ANC’s properly adopted written recommendations are entitled to great weight from the Board. D.C. Code §§ 1-309.10(d), 25-609; *Foggy Bottom Ass’n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982). Accordingly, the Board “must elaborate, with precision, its response to the ANC[’s] issues and concerns.” *Foggy Bottom Ass’n*, 445 A.2d at 646. Contrary to the Group’s argument, the great weight requirement does not require or entitle anyone to a hearing. *Opposition*, at 6. Instead, it merely requires the Board to provide a public explanation or response, which the Board satisfies below.

In its recommendation, the ANC requested that the Board grant the Group a hearing and address the fitness issues raised in their complaint. *Letter from Kevin Wilsey, Chairman, Advisory Neighborhood Commission 2C, to Fred Moosally, Director, Alcoholic Beverage Regulation Administration*, 1-2 (Jun. 12, 2019). Specifically, the ANC is concerned that the Applicant does not satisfy § 25-301(a)(1)’s requirement that the Applicant be “of good character and generally fit for the responsibilities of licensure.” *Id.* at 1; D.C. Code § 25-301(a)(1). Nevertheless, as noted above, the matter is no longer contested; therefore, the right for any outside objector to present evidence and argument on the Applicant’s fitness for licensure has been waived. Moreover, without a contested case, there is no legal requirement to produce

¹ This does not prevent the Board from issuing admonishments, notices, and warnings to licensees during show cause matters that the underlying offenses leading to the show cause hearing may be considered under § 25-301(a)(1) when the Board reviews their future applications for licensure or renewal.

findings of fact and conclusions of law on the matter. *Craig*, 721 A.2d at 590. As a result, matters falling outside of the Board's regular review process will not be considered at this time. This means that while the Board will consider matters raised by the renewal application, such as the Applicant's criminal background history, ABRA violation history, and its operating history in making a determination under § 25-301(a)(1), the Board will not consider the specific claims raised by the Group, which fall outside the Board's regular application review process. Finally, this further means that the Group will not get its desired hearing because it failed to obtain standing.

ORDER

Therefore, on this 25th day of September 2019, the Board **GRANTS** the motion to dismiss. The Group's protest is dismissed for failing to maintain standing in accordance with D.C. Official Code § 25-601(2).

IT IS FURTHER ORDERED that, as soon as practicable, ABRA's Licensing Division prepare and place the Application on the Board's uncontested licensing agenda for final review pending the Applicant's satisfaction of any outstanding requirements related to consideration by the Board and renewal.

A copy of this Order shall be provided to the parties and ANC 2C.

District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson

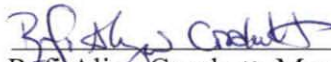


James Short, Member



Bobby Cato, Member

Rema Wahabzadah, Member



Rafi Aliya Crockett, 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. 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. 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).