

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

In the Matter of:)
)
FD, LLC)
t/a Unity)
)
Applicant for a Renewal of a)
Retailer's Class CT License)
)
at premises)
1936 9th Street, NW)
Washington, D.C. 20001)

Case No.: 20-PRO-00022
License No.: ABRA-109064
Order No.: 2020-1033

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member
Rafi Aliya Crockett, Member
Jeni Hansen, Member
Edward S. Grandis, Member

ALSO PRESENT: FD, LLC, t/a Unity, Applicant

Allan Ebert, Counsel, on behalf of the Applicant

Dan Orlaskey and Evan Schlom, on behalf of A Group of Eight
Individuals, Protestant

Martha Jenkins, General Counsel, Alcoholic Beverage Regulation
Administration

ORDER REINSTATING RENEWAL APPLICATION

The application filed by FD, LLC, t/a Unity (Applicant), for renewal of its Retailer's Class CT License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on September 28, 2020, in accordance with D.C. Official Code § 25-601 (2001). On September 30, 2020, the Board issued Board Order No. 2020-292, which dismissed the application, because the Applicant failed to appear at the Roll Call Hearing.

Subsequently, the Applicant untimely filed for reinstatement on November 9, 2020, and the motion was denied in Board Order No. 2020-726, which was issued on November 18, 2020. After the denial, the Applicant filed a Motion for Reconsideration which

included the Applicant's undated call records from his personal cell phone use. The Board was not persuaded by the supplemental filing, and denied the motion on December 2, 2020, in Board Order No. 2020-984.

Finally, the Applicant again renewed its motion for reinstatement on December 8, 2020, based on evidence, this time in the agency's call records that demonstrated, in fact, the Applicant did appear at the Roll Call hearing on September 28, 2020. The motion is opposed by the Protestant.

In this case, it is appropriate to permit an additional filing by the Applicant where the Board took judicial notice of ABRA's online call records *sua sponte*, and the Applicant has not yet had an opportunity to be heard regarding those records. Moreover, the Board credits the Applicant's evidence that he actually called into the required hearing at the appropriate time but due to technical issues his appearance was not recognized by the Board's agent. Therefore, the orders dismissing the application shall be vacated where the underlying facts supporting the dismissal are not correct.

The Board further waives the appearance and filing requirements related to the dismissal of the application in this case pursuant to 23 DCMR § 1700.2 (West Supp. 2020). The Board finds such a waiver appropriate and in the interest of justice where the original dismissal was based on incorrect information, and not the fault of the Applicant. Moreover, where the Applicant can merely refile the application and renew his request without prejudice, the vacating of the dismissal Order is not prejudicial to the other parties.

ORDER

Therefore, the Board, on this 23rd day of December 2020, hereby **REINSTATES** the application. The parties are advised that the Protest Status Hearing is scheduled for January 7, 2021 at 10:30 a.m. Copies of this Order shall be sent to the Parties.

District of Columbia
Alcoholic Beverage Control Board

Signed via SignatureDocx.com
Donovan Anderson
Key: 2576174M2026164438197262664

Donovan Anderson, Chairperson

Signed via SignatureDocx.com
James Short
Key: 2576174M2026164438197262664

James Short, Member

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Bobby Cato
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Bobby Cato, Member

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Rema Wahabzadah, Member
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Rema Wahabzadah, Member

Rafi Crockett, Member

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Jeni Hansen, Member
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Jeni Hansen, Member

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Edward S. Grandis, Member
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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, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

Also, pursuant to section II 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).