

**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.: 2020-984

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 DENYING MOTION FOR RECONSIDERATION

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. The Applicant has now filed a motion for reconsideration. In the motion, dated

November 18, 2020, the Applicant claims that the Application should be reinstated because he was present during the online hearing but his phone inexplicably disconnected. *Req. for Reinstatement – Supplement*, 1 (Nov. 18, 2020). He further indicates that the Board’s agent acknowledged the “mix-up” and indicates that the Board’s agent stated that the Applicant responded to the invitation to the hearing and registered to attend. *Id.* She further stated, “[i]t sounds like you were present, and then for some reason, you were disconnected.” *Id.* The Applicant also showed undated phone records of calls to a number, and at least one call of over an hour in the records. Finally, the Applicant further argues that his email communication with members of ABRA’s legal department on October 8, 2020, constitute a timely motion for reinstatement. *Id.*

The Protestant objects to the request because it fails to follow the regulations regarding motions described in 23 DCMR §§ 1716 (West Supp. 2020). The Protestant further asserts that the Applicant has provided no new information that requires the overturning of the Board’s prior decision, and was adequately represented after the hearing. *Id.* at 3. The Board agrees with the Protestant and denies the motion for various reasons.

First, the Board agrees with the Protestant that the motion fails to conform with the regulations. Second, even when considered on the merits, none of the information provided by the Applicant adequately explains or excuses the failure to file a timely motion for reinstatement after the Board issued its dismissal order. Third, the Board does not credit the Applicant’s argument that he called into or was present for the online hearing. Specifically, the program used by the Board creates attendance and call records for the Board’s online hearings and identifies each attendee by name and number.¹ If the owner had been on the phone for over an hour, then his name should have appeared on this record. Nevertheless, only the Protestant’s representative appears, along with other persons unrelated to this application. Fourth, the email communication to ABRA’s legal department cannot constitute a proper request for reinstatement, as there is no indication the motion conformed with the regulations for filing a motion, no indication that the email was properly served on the other side, the agency’s legal department is not the Board, and the communication was not directed to the Board. Therefore, there is no basis for reinstatement or reconsideration of the Board’s prior Order.

ORDER

Therefore, the Board, on this 2nd day of December 2020, hereby **DENIES** the motion filed by the Applicant. Copies of this Order shall be sent to the Parties.

¹ The Board takes judicial notice of its attendance records. A copy of the agency’s attendance report for September 28, 2020, may be requested from ABRA under FOIA because the attendance sheet contains personal contact information that likely requires redactions.

District of Columbia
Alcoholic Beverage Control Board

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Donovan Anderson
Key: 625250967935947337950831102225

Donovan Anderson, Chairperson

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James Short
Key: 547637518202923261033540573262

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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Rafi Aliya Crockett, Member
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Rafi Crockett, Member

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Jeni Hansen, Member

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Edward 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 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).