

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

In the Matter of:)	
)	
Watergate Hotel Lessee, LLC)	Case Number: 13-PRO-00005
t/a Watergate Hotel)	License Number: 091162
)	Order Number: 2013-417
Application for a New)	
Retailer's Class CH License)	
)	
at premises)	
2650 Virginia Avenue, N.W.)	
Washington, D.C. 20037)	
)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Watergate Hotel Lessee, LLC, t/a Watergate Hotel, Applicant

Stephen O'Brien, of the firm Mallios and O'Brien, on behalf of the Applicant

Erica Mueller, of The Marcus Firm, PLLC, on behalf of Judge Pauline Newman and Cynthia Walker

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING THE MOTION FOR RECONSIDERATION

INTRODUCTION

This case addresses the Alcoholic Beverage Control Board's (Board) fundamental authority to determine the standing of parties to a protest, and an applicant's right to know the entities and individuals protesting their application. The interpretation of our statutes and regulations proposed by the objectors at the May 8, 2013 hearing undermines the Board's ability to ensure that we have the jurisdiction and authority to adjudicate a protest. The objectors interpretation further undermines the mediation process by denying the applicant the certainty that they are negotiating with known and admitted parties towards a settlement agreement prior to the protest hearing.

Upon careful consideration of the arguments presented by both parties, we conclude that our long-standing interpretation of our laws and regulations is correct, and is the most efficient and fairest means of administering the protest process in accordance with Title 25 of the District of Columbia (D.C.) Official Code. For these reasons, and the reasons stated below, we affirm Board Order No. 2013-293.

PROCEDURAL BACKGROUND

“The Watergate Hotel Lessee, LLC, t/a Watergate Hotel, (Applicant) submitted an Application for a New Retailer’s Class CH License (Application) at 2650 Virginia Avenue, N.W.” In re Watergate Hotel Lessee, LLC, t/a Watergate Hotel, Case Number 13-PRO-00005, Board Order No. 2013-293, ¶ 2 (D.C.A.B.C.B. Jul. 24, 2013).

The Roll Call Hearing for the Application occurred on February 25, 2013. Id. at ¶ 10. The 2700 Virginia Avenue Group originally submitted a petition with seventeen individual signatures.¹ Id. at ¶ 4. Without objection, the signatories to the 2700 Virginia Avenue Group accepted Dr. William Smith as their designated representative. Id. at ¶ 15. Without objection, our Agent also dismissed the signatories to the 2700 Virginia Avenue Group that had not appeared in person or through a designated representative at the Roll Call Hearing. Id. at ¶ 14. Our Agent then determined that Advisory Neighborhood Commission (ANC) 2A, the 2700 Virginia Avenue Group, as a fourteen member group of residents and property owners, and the Waldman Group had standing to protest the Application. Id. at ¶ 17.

The parties attended two mediation sessions and attended a Protest Status Hearing on March 27, 2013. Id. at ¶¶ 18-19. In response, we received a Settlement Agreement between the Applicant, Watergate West, Inc., Watergate East, Inc., and Watergate South, Inc. Id. at ¶ 20. Following receipt of the Settlement Agreement, we received withdrawals from ANC 2A and members of the various protest groups. Id. at ¶ 21. Dr. Smith, the 2700 Virginia Avenue Group’s designated representative, withdrew at this time as well.² Id.

Based on these withdrawals, we noted that the 2700 Virginia Avenue Group appeared to lose eleven members, while the Waldman Group appeared to lose four members. Id. at ¶ 22. As a result, on May 8, 2013, we asked the parties to appear before the Board to address whether the various groups to the protest still had standing to protest the Application. Id. at ¶ 24.

At the hearing, the 2700 Virginia Avenue Group appeared before the Board with the Applicant to discuss the standing issue. On July 24, 2013, we issued a written order dismissing the protest against the Applicant by two groups of five or more residents and

¹ The Individual Petitioners continue to refer to the group as a group of thirty-two; however, as we discussed in our prior Order, this figure has been completely discredited and has no basis in fact. Compare Mot. for Recon., 1 n. 1 with In re Watergate Hotel Lessee, LLC, t/a Watergate Hotel, Case Number 13-PRO-00005, Board Order No. 2013-293, ¶ 4, 14 (D.C.A.B.C.B. Jul. 24, 2013).

² It is the view of the Board that any actions taken by Mr. Smith on behalf of the 2700 Virginia Avenue Group before he withdrew are binding on the group, including his obligation to accept notice and service on behalf of the group.

property owners—the 2700 Virginia Avenue Group and the Waldman Group—and the signatories to the Watergate West Petition. In re Watergate Hotel Lessee, LLC, t/a Watergate Hotel, Case Number 13-PRO-00005, Board Order No. 2013-293, 18 (D.C.A.B.C.B. Jul. 24, 2013). The Board also accepted the withdrawal of various participants, and we accepted the Settlement Agreement between the Applicant, Watergate West, Inc., Watergate East, Inc., and Watergate South, Inc. Id. The Board further used the Order to provide notice to the parties that we had accepted the recommendation of our Agent to dismiss various signatories to the protest petition under § 1601.7 of Title 23 of the D.C. Municipal Regulations (Title 23). Id. Furthermore, we informed Ms. Mueller that we considered service of our Order on counsel as constituting service to the entire 2700 Virginia Avenue Group. Id. Finally, we also noted that none of the recognized protestants in this matter were entitled to raise issues outside of the issues raised in their initial protest letters submitted to the Board. Id.

In brief, our holding in the prior Order was based on the following reasoning:

In Section I [of our prior Order], we conclude that D.C. Official Code § 25-444(b) and § 1601.9 of Title 23 provide the Board with the authority to determine whether individual signatories may participate in a protest as part of a group of five or more residents or property owners sharing common grounds. Furthermore, in Section II [of our prior Order], we conclude that the Board, and our Agent, have the authority to bar protest petition signatories from joining a protest group if those signatories fail to appear at a Roll Call Hearing or Protest Status Hearing under §§ 1601.5, 1601.6, and 1603.3 of Title 23. In addition, our Agent is entitled to conclude that absent signatories cannot be identified and cannot satisfy the standing requirements of § 25-601(2).

Consequently[] . . . our Agent correctly dismissed those signatories who failed to appear in person or through a designated representative at the Roll Call Hearing on February 25, 2013. The Newman Petitioners' argument that the absent signatories were represented by Dr. Smith is not supported by § 1707.1 of Title 23 or the record. We also conclude that the 2700 Virginia Avenue Petition only contained twenty-two signatures, not thirty-two signatures, because the petition filed timely with the Board only contained twenty-two signatures. Therefore, the only valid members of the 2700 Virginia Avenue Group are Judge Newman and Mr. Walsh. Mr. Burney, Ms. Hughes, and Mr. Waldman may not join the 2700 Virginia Avenue Group, because they did not sign the original petition submitted to the Board; therefore, they may not join the group under § 1801.2 of Title 23. Furthermore, their addition to the protest would be untimely under § 25-602. We also conclude that the Board's Agent was not authorized to permit Cynthia Walker to join the 2700 Virginia Avenue Group, because adding her to the group violates § 25-602 and § 1801.2 of Title 23. Therefore, because we conclude that the 2700 Virginia Avenue Group only contains two members, we dismiss this group's protest under § 25-601(2).

In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at 9.

In response to our Order, we received Motions for Reinstatement from Kathleen Burney, Robert Burney, Herbert Goda, Victoria Jennings, Patricia Kellogg, William

Schneider, and June Walsh (collectively the “Individual Signatories”) on August 5, 2013.³ Mot. for Reinstatement, 1 (Kathleen Burney); Mot. for Reinstatement, 1 (Robert Burney); Mot. for Reinstatement, 1 (Goda); Mot. for Reinstatement, 1 (Jennings); Mot. for Reinstatement, 1 (Kellogg); Mot. for Reinstatement, 1 (Schneider); Mot. for Reinstatement, 1 (June Walsh).

We also received a Motion for Reconsideration from Judge Newman and Ms. Walker (collectively, the “Individual Petitioners”)—not the 2700 Virginia Avenue Group. Mot. for Recon., 1.⁴ The Applicant replied to the Motion for Reconsideration in an Opposition filed on August 13, 2013. Opp. to Mot. for Recon., 1. Counsel for the Individual Petitioners then filed a reply to the Opposition on August 25, 2013. Reply in Supp. of Pet. for Recon., 1. The Applicant also filed a response to the Motions for Reinstatement filed by the various Individual Signatories on August 26, 2013. Applicant’s Resp. to Pet. for Reinst., 1-5.

SUMMARY

In Section I of this Order, we conclude that the Motion for Reconsideration filed by the Individual Petitioners is invalid under D.C. Official Code § 25-433, because the Individual Petitioners cannot represent the 2700 Virginia Avenue Group—the actual party in this matter—in their individual capacities; therefore, we find that the 2700 Virginia has not properly filed a motion for reconsideration with the Board. The rest of the Order, except for our determination regarding the Motions for Reinstatement, should be considered alternative holdings, separate and apart from our decision in Section I.

In Section II, in accordance with our prior Order, we conclude that the additional non-appropriateness arguments raised by the Individual Petitioners should have been raised in their initial protest letter. Consequently, the Individual Petitioners are not entitled to raise these additional issues at this stage in the protest process.

In Section III, we determine that the Individual Petitioners’ arguments regarding the Settlement Agreement approved by the Board lack merit, because they incorrectly presume that the Settlement Agreement has the power to authorize the Applicant to undertake activities outside the scope of the Application and its license, if and when issued. The Individual Petitioners’ conclusion is not supported by the law and Board practice; therefore, we find their arguments on this ground unpersuasive.

In Section IV, we affirm our determination regarding the standing of the 2700 Virginia Avenue Group in our prior Order and address the various arguments raised by the Individual Petitioners in their motion.

³ The Motions for Reinstatement submitted to the Board did not contain Certificates of Service under § 1703.7 of Title 23. ABRA’s Office of General Counsel contacted the Applicant and determined that the Motions for Reinstatement had not been properly served on the Applicant. Therefore, we accepted the Applicant’s response to the Motions for Reinstatement on August 26, 2013.

⁴ Counsel limited the term “petitioners” in her brief to Judge Newman and Ms. Walker and has limited the scope of her firm’s representation to these two individuals. Mot. for Recon., 1 n. 1, 31 n. 24. Therefore, we deem the Motion for Reconsideration solely submitted by Judge Newman and Ms. Walker in their individual capacities, and not as a Motion for Reconsideration for the entire group.

In Section V, we determine that the Board provided adequate notice of our prior Order to the 2700 Virginia Avenue Group in accordance with the D.C. Administrative Procedure Act and § 1703.5(g) of Title 23. Therefore, any dismissed signatories that failed to file a Motion for Reinstatement in response to our Order have waived their right to do so.

In Section VI, we conclude that our prior Order satisfied § 1601.7 of Title 23.

In Section VII, we conclude that the Board was entitled to investigate the standing of the 2700 Virginia Avenue Group as a matter of law on May 8, 2013, and that our investigation was reasonable based on the withdrawal of various signatories and the determination of our Agent at the Roll Call Hearing.

In Section VIII, based on the motion filed by the Individual Petitioners, we conclude that the 2700 Virginia Avenue Group no longer possesses common grounds for its protest. The record shows that the group knowingly refuses to act as a single entity and does not act with the approval of the majority of its members; especially, when it is clear that the remaining and claimed members are communicating and coordinating with one another, yet refuse to act as a single group. Therefore, separate and independent from our determination in our prior Order, we find that the group lacks common grounds under D.C. Official Code § 25-601(2) and does not have standing to protest the Application as a group.

In Section IX, the Board denies the Motions for Reinstatement filed by the Individual Signatories on their merits for failing to state good cause for failing to appear at the Roll Call Hearing.

FINDINGS OF FACT

The Board makes the following additional findings of fact in response to the statements made by the Individual Petitioners in their Motion for Reconsideration.

A. On May 3, 2013, The Marcus Firm, PLLC, on behalf of Judge Newman and Cynthia Walker, informed the Board that the firm had “been retained by Cynthia Walker and Judge Pauline Newman, who are part of a group of . . . property owners and residents . . . We have been authorized to represent Ms. Walker and Judge Newman’s interests at all ABRA proceedings and hearings.” Letter from Erica Mueller to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board, 1 (May 3, 2013).

B. At the May 8, 2013, hearing Chairperson Miller opened the record in Case No. 13-PRO-00005, called on the parties appearing before the Board to identify themselves for the record, and stated that the issue before the Board was “whether there are any parties left to carry on a protest.” *Transcript (Tr.)*, May 8, 2013 at 2-3.

C. In response, Stephen Marcus, of The Marcus Firm, PLLC, stated, “Stephen Marcus and my colleague, Erica Mueller, for the protestants.” *Id.* at 3. Erica Mueller, of The Marcus Firm, PLLC, also stated, “My name is Erica Mueller and I’m here on behalf of the protestants.” *Id.* at 4.

D. Chairperson Miller then asked Ms. Mueller the following: “So, Ms. Mueller, who exactly are you representing here?” Id. at 4-5. In response, Ms. Mueller stated, “I’m representing the group of protestants. I’m here on their behalf.” Id. Chairperson Miller further asked “What part?” Id. at 5. Ms. Mueller responded, “The individuals who are here today are Judge Pauline Newman, Cynthia Walker, who are clients. We also have here today Michael Walsh, June Walsh, Herbert Goda, Robert Burney, Maria Hughes, and Jerry Waldman.” Id.

E. The Board notes that the individuals listed in Paragraph D attended the May 8, 2013, hearing; however, none of them identified themselves as the designated representative of the 2700 Virginia Avenue Group, or objected to any statements made by counsel for the Individual Petitioners on their behalf. See id. at 8.

F. Michael Walsh spoke briefly on the record at the May 8, 2013 hearing, but never identified himself as the 2700 Virginia Avenue Group’s designated representative or objected to the Individual Petitioners’ counsel speaking on his behalf. Id. at 84.

G. In our prior Order, we wrote:

IT IS FURTHER ORDERED that the Board adopts the recommendation of the Board’s Agent at the Roll Call Hearing on February 25, 2013, under § 1601.7, to deny various individual signatories, as identified in this Order, standing to join a group of five or more residents or property owners. The signatories have ten (10) days to file for reinstatement upon receipt of this Order. We note that the receipt of this Order by the Newman Petitioners’ counsel constitutes sufficient notice to the signatories to the 2700 Virginia Avenue Petition, and any other individuals similarly represented, that we have dismissed their protest.

In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at 18.

H. In footnote 24 of the Motion for Reconsideration, counsel writes, “Counsel for Petitioners have not been retained by all of the individual signatories to the protest petition and therefore cannot accept the Order as notice on these individual’s behalf.” Mot. for Recon., 31 n. 24.

I. The Motions for Reinstatement filed by Dr. Kellogg; Ms. Jennings; Mr. Schneider; Herbert Goda; Mr. Burney; and Ms. Burney are completely identical except for the handwritten answer to the statement “I had good cause for failing to attend the Roll Call Hearing:”; the individual’s handwritten signature; and the individual’s handwritten name and contact information. Mot. for Reinstatement, 1 (Kathleen Burney); Mot. for Reinstatement, 1 (Robert Burney); Mot. for Reinstatement, 1 (Goda); Mot. for Reinstatement, 1 (Jennings); Mot. for Reinstatement, 1 (Kellogg); Mot. for Reinstatement, 1 (Schneider).

ARGUMENTS OF THE PARTIES

The Individual Petitioners argue the following: (1) the Application is incomplete because it does not contain all of the required information, and the Board did not have the

authority to accept the license application, take any action on behalf of the application, or schedule a Roll Call or Protest Hearing, Mot. for Recon., 3, 8-25; (2) the Settlement Agreement exceeds the scope of the Application and could not be accepted by the Board, *id.*, at 31; (3) the Board does not have the authority to dismiss individual signatories from a group of five or more residents or property owners, *id.* at 26; (4) the Board did not give notice to the dismissed signatories of the protest petitions that we dismissed them from the protest; and (5) the Board failed to provide notice under § 1607.1, *id.*, at 31. The Individual Signatories argue separately that they are entitled to reinstatement. *Supra*, at ¶ I.

In opposition, the Applicant notes that the Board's prior Order is correct, and that the Individual Petitioners lack standing to assert "generalized grievances." *Opp. to Mot. for Recon.*, 4-5. In addition, counsel notes that unopposed applications are presumed appropriate; therefore, the Individual Petitioners' arguments regarding the completeness of the Application are resolved in favor of the Applicant under D.C. Code § 25-311(a). *Id.* at 5 n. 7. The Applicant argues that we should deny the Motions for Reinstatement filed by Kathleen Burney and Robert Burney, because they are not signatories to the original protest petition filed by the 2700 Virginia Avenue Group. *Resp. in Opp. to Pet. for Reinst.*, 1. Finally, the Applicant argues that the signatories requesting reinstatement lack good cause. *Id.* at 1-2.

DISCUSSION

We agree with the Applicant, and for the foregoing reasons, deny the Motion for Reconsideration filed by the Individual Petitioners and the Motions for Reinstatement filed by the Individual Signatories.

I. THE INDIVIDUAL PETITIONERS LACK STANDING TO FILE A MOTION FOR RECONSIDERATION UNDER § 25-433.

The Individual Petitioners, in their individual capacities, are not entitled to file a Motion for Reconsideration with the Board under § 25-433, because they are not recognized parties.

Under § 25-433(d)(1), "A petition for reconsideration . . . may be filed by a party within 10 days after the date of receipt of the Board's final order." D.C. Code § 25-433(d)(1) (West Supp. 2013). Under § 25-444, "The parties to the protest hearing shall be the applicant and the protestants as identified at the administrative review." D.C. Code § 25-444(b) (West Supp. 2013).

At the administrative review—in this case, the February 25 Roll Call Hearing—our Agent recognized ANC 2A, the 2700 Virginia Avenue Group, and the Waldman Group as parties—not Judge Newman and Cynthia Walker in their individual capacities. *In re Watergate Hotel Lessee, LLC*, Board Order No. 2013-293, at ¶ 17. Nevertheless, the Individual Petitioners have made clear that they only represent themselves and do not speak for the entire group. *Mot. for Recon.*, 1; *supra*, at ¶ H. Accordingly, we must deny the Motion for Reconsideration, because it is not filed by a party as required by § 25-433(d)(1).

While we deny the Motion for Reconsideration on these grounds, we also address the following separate and independent reasons for denying the motion below.

II. THE PROTESTANTS IN THIS MATTER WAIVED ANY CHALLENGES ON NON-APPROPRIATENESS GROUNDS BY FAILING TO RAISE SUCH ISSUES IN THEIR INITIAL PROTEST LETTERS.

As we explained in our prior Order, if a party wants to raise issues outside of appropriateness issues, then these must be included in a party's protest letter under D.C. Official Code § 25-602 and §§ 1601.8, 1602.1, and 1602.4 of Title 23. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at 17. Under §§ 25-313 and 25-314, "appropriateness" refers to an establishment's effect on real property values; peace, order, and quiet; residential parking needs and vehicular and pedestrian safety; overconcentration; and the establishment's effect on schools, recreation centers, and similar facilities, as well as the people they serve. D.C. Code §§ 25-313(b), 25-314(a) (West Supp. 2013). The Individual Petitioners attempt to argue in their Motion for Reconsideration that (1) the Application is incomplete; (2) the Board does not have the legal authority to take action on the license; and (3) that we lack the authority to hold hearings regarding the license. Mot. for Recon., 3.

Nevertheless, as we demonstrated in our prior Order, none of the recognized protestants in this matter raised these issues in their initial protest letters; therefore, these new issues raised by the Individual Petitioners have been waived. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at 17-18.

In addition, under our rules governing Motions for Reconsideration:

If a petition is based in whole or in part on a new matter, that matter shall be set forth in an affidavit and be accompanied by a statement that the petitioner could not by due diligence have known or discovered the new matter prior to the date the case was presented to the Board for decision.

23 DCMR § 1719.4 (West Supp. 2013). We note that applications submitted to the Board are matters of public record, and are available to the public during the protest period. Therefore, there is no excuse for the parties or the Individual Petitioners to have failed to raise these additional issues in their initial protest letters. For this reason, we deny the Individual Petitioners' request for reconsideration of our prior Order based on these new arguments. Simply put, the parties should have been aware of these alleged issues at the time they submitted their initial protest letters.⁵

III. THE INDIVIDUAL PETITIONERS MISUNDERSTAND THE ROLE AND PURPOSE OF A SETTLEMENT AGREEMENT.

The Individual Petitioners ask us to vacate our prior Order, because the "scope" of the Settlement Agreement entered into by the Applicant exceeds the scope of the Application and the notice of the application given to the public. Mot. for Recon., 9. The

⁵ We note that the Board determines on its own that an application meets the requirement of Title 25 and Title 23 prior to issuing a license.

Individual Petitioners misunderstand the role and function of settlement agreements under D.C. Official Code § 25-446 and how the Board treats such agreements as a matter of agency practice.

The Applicant may only undertake activities that require the approval of the Board if they are in accordance with the Application and the Applicant's license. See generally D.C. Code § 25-762 (West Supp. 2013). In approving the scope of the license, the Board only looks to a settlement agreement insofar as it bars the Board from approving a specific request—nothing more.⁶

For example, an applicant may request five summer gardens in its application while the applicant's settlement agreement authorizes six summer gardens. If the applicant receives a license, the applicant will only be permitted to operate the five summer gardens mentioned in the application. If the applicant wants to operate a sixth summer garden in accordance with the settlement agreement, it will have to submit a separate application for an additional summer garden permit, which, if deemed a substantial change, would be subject to additional public comment and review. In addition, if the applicant wanted to apply for a seventh summer garden, under the terms of the hypothetical settlement agreement, we would deny such an application until the applicant submitted an amendment to its settlement agreement authorizing a seventh summer garden.⁷

For these reasons, we uphold our decision to approve the Settlement Agreement. We also note that the Individual Petitioners are not parties to the Settlement Agreement; therefore, they have no standing to challenge the Settlement Agreement or the withdrawals conditioned on approval of the Agreement.⁸

IV. THE BOARD AFFIRMS ITS DECISION REGARDING THE STANDING OF THE 2700 VIRGINIA AVENUE GROUP.

We find the Individual Petitioners' arguments disputing our determination regarding the standing of the 2700 Virginia Avenue Group unpersuasive.

⁶ For example, if an agreement bars entertainment, we would deny an applicant's application for an entertainment endorsement. On the other hand, if the agreement permitted entertainment, we would not permit the applicant to offer entertainment until it had also applied for an entertainment endorsement. No applicant may rely on a settlement agreement to authorize activities at the establishment; otherwise, the applicant risks violating the substantial change law found at D.C. Official Code § 25-762.

⁷ The prior Order used the Board's boilerplate language for approving settlement agreements. It is our belief that the Applicant is well aware that the settlement agreement does not authorize any activity that exceeds the scope of the Application and its future license, if and when issued. If the Applicant wants to obtain a privilege that requires Board approval, which the settlement agreement permits but exceeds the scope of the license and its original Application, then it needs to submit an application under the Board's substantial change procedures.

⁸ If ANC 2A and the withdrawing signatories disagree with the Board's decision regarding the Settlement Agreement, then they are fully capable of representing their own interests in this matter. We have not received any motions for reconsideration or reinstatement from these parties and individuals; therefore, we can only presume that they are satisfied with the Board's prior Order.

Our interpretation of our statutes and regulations related to the standing of the signatories that failed to appear at the Roll Call Hearing satisfies the *Chevron* test. D.C. Appleaseed Center for Law and Justice, Inc. v. District of Columbia Department of Insurance, Securities, and Banking, 54 A.3d. 1188, 1211 (D.C. 2012).

Under *Chevron*, when “the meaning of the statute [or regulation] is clear . . . we “must give effect to the unambiguously expressed intent of [the legislature].” Id. If the statute is ambiguous, then the Board is entitled to use its reasonable judgment in interpreting the statute it administers. Id.

Accordingly, we should “first look at the language of the statute by itself to see if the language is plain and admits of no more than one meaning.” Id. at 1213. When interpreting statutes, we should also treat “statutory interpretation” as a “holistic endeavor”; therefore, we should read our statutes and regulations as a whole. Id. Finally, we should interpret the statute that we administer in accordance with the legislature’s purpose. Id.

- a. *The Board has the authority to exclude individual signatories from a group under § 25-444(b) and § 1601.9.*

As we explained, we have the power to determine whether an individual resident or property owner belongs in a group based on the term “identify” in § 25-444(b) and § 1601.9 of Title 23. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at 10. The Individual Petitioners ignore our key holding, and do not explain how our interpretation is contrary to the plain meaning of the term “identify” found in the pertinent statutes and regulations.⁹ Therefore, we affirm our holding in Section I of our prior Order. Id.

- b. *The Board has the authority to exclude individual signatories for failing to appear under § 1601.5.*

We further explained that our power to exclude individual signatories from the protest for failing to appear comes from § 1601.5. Id. Section § 1601.5 states, “. . . each person submitting a protest shall attend the administrative review hearing in person or appear through a designated representative.” 23 DCMR § 1601.5 (West Supp. 2013); id. We find the Individual Petitioners’ response unpersuasive, because it appears to ignore our key holding—as their argument does not even cite or refer to § 1601.5. Mot. for Recon., 26-30.

The Individual Petitioners seek to deny the Board the power to dismiss individual signatories from the protest by relying on the definition of the term “person” found in § 25-601. Mot. for Recon., 27. Yet, as we explained, the definition of the term “person” found in § 25-101(37), which, *inter alia*, defines a “person” as an “individual,” applies to §

⁹ Indeed, the relevant portion of their Motion for Reconsideration does not even mention the word “identify.” Mot. for Recon., 26-30.

1601.5—not § 25-601.¹⁰ D.C. Code § 25-101(37) (West Supp. 2013). The Individual Petitioners do not explain how our definition of the term “person” in § 1601.5 is contrary to the plain meaning of the term “person” as commonly used in the English language or as defined in Title 25’s definition section.

Furthermore, even if § 1601.5 were held to be ambiguous, the Individual Petitioners do not explain how our resolution of the competing definitions of the term “person” provided by §§ 25-101(37) and 25-601 is unreasonable.¹¹

The Individual Petitioners also argue that § 1606.2 “confirms” their interpretation. Mot. for Recon., 26-27. Yet, we look no further than the very text of § 1606.2 to demonstrate the illogic of this position. Under § 1606.2,

The parties to a protest hearing shall be the applicant or licensee and the protestants. For the purpose of this section, "protestant" shall mean any eligible person, group, ANC, government agency or organization with standing under D.C. Official Code § 25-601 that has submitted a written protest or who has circulated a Protest Petition.

23 DCMR § 1606.2 (West Supp. 2013). First, § 1606.2 defines the “parties to a protest hearing” and the term “protestants”—it does not define the term “person.” Therefore, § 1606.2 does not apply to § 1601.5, because § 1601.5 does not contain the word “parties” or “protestants.”¹² Second, § 1606.2 explicitly limits its authority to “this section”; therefore,

¹⁰ See D.C. Code §§ 25-601, 25-601(2) (West Supp. 2013) (“The following persons may protest the issuance or renewal of a license, the approval of a substantial change in the nature of operation as determined by the Board under § 25-404, a new owner license renewal, or the transfer of a license to a new location: . . . (2) A group of no fewer than 5 residents or property owners of the District sharing common grounds for their protest; provided, that in a moratorium zone established under § 25-351 (or in existence as of May 3, 2001), a group of no fewer than 3 residents or property owners of the District sharing common grounds for their protest”).

¹¹ Indeed, our conclusion that § 25-101(37) “appl[ies] throughout Title 25 and Title 23 unless expressly indicated or such interpretation leads to an absurd result” is further supported when we look at the statute as a whole. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at 10-11 n.6; see also District of Columbia v. American University, 2 A.3d 175, 187 (D.C. 2010) (saying that statutes should be read holistically and not be “read . . . in a way that makes them run headlong into one another”). For example, we note that § 25-602 only relies on the definition of the term “person” found in § 25-601, because it explicitly states, “Any *person* objecting, under § 25-601 . . .” D.C. Code § 25-602(a) (West Supp. 2013) (emphasis added). Yet, in contrast, such an interpretation would not make sense if applied to § 25-444(c), which states, “If there is more than one protestant, the Board, in its discretion, may require the protestants to confer among themselves and designate one *person* to conduct the protestants’ case”—clearly, referring to an individual. D.C. Code § 25-444(c) (West Supp. 2013) (emphasis added). Section 25-601’s definition of the term person would also not make sense if applied to § 1605.5, which states, “. . . any *person* may circulate or sign Protest Petitions in opposition to any of the licensing actions listed in § 1605.1”—again, clearly, referring to an individual. 23 DCMR § 1605.1 (West Supp. 2013) (emphasis added). As a result, our resolution of the potential conflict between the definition of the term “person” provided by §§ 25-101(37) and 25-601 ensures that they operate in harmony and prevents these statutes from running “headlong into one another.” District of Columbia v. American University, 2 A.3d at 187.

¹² In full, § 1601.5 states, “Each applicant, and each person submitting a protest shall attend the administrative review hearing in person or appear through a designated representative.” 23 DCMR § 1601.5.

§ 1606.2 does not apply to all of Chapter 16 and has no bearing on the interpretation of § 1601.5, which is not located in the same section. Third, similar to our interpretation of the term “person” in § 1601.5, the term “person” in § 1606.2 must refer to an individual; otherwise, there would be no need to list the other possible types of protestants provided by § 25-601. Fourth, by using the term “person” and “group” separately, it is clear that the regulation does not give the term “person” and the term “group” the same meaning. For these reasons, the Individual Petitioners’ reference to § 1606.2 only bolsters our conclusion.

The Individual Petitioners further argue that “It . . . would be an administrative nightmare” to require all the group members to attend the Roll Call Hearing. Mot. for Recon., 28. We disagree. As we stated in our prior Order, this “appearance requirement is not onerous [because] . . . an individual . . . can merely appoint a designated representative to attend in their place.” In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at 11.

The Individual Petitioners also challenge our reading of the legislative history regarding § 25-601, which they claim we use to support the view that we are entitled to require all signatories to appear at Roll Call Hearing.¹³ First, we note that we are not requiring all signatories to appear in person at the Roll Call Hearing; instead, our rules require that the signatories appear either in person *or through a designated representative*. Second, we cite the legislative history to support the philosophy and the policy behind our decision; namely, that we “must determine carefully whether each group truly fulfills the standing requirement” and that the Applicant is entitled to an opportunity to challenge a party’s standing, if the Applicant so chooses. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at 11-12.¹⁴ Third, the Individual Petitioners cite no legislative history that supports their interpretation. And fourth, we cite the legislative history to demonstrate that the Individual Petitioners’ interpretation would lead to unlawful protests—an argument that the Individual Petitioners have ignored in their Motion for Reconsideration. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at 12.

Finally, we note that our reasoning set forth above represents the long-standing practice and interpretation of the Board. The Individual Petitioners have not provided any

¹³ The Individual Petitioners have also contested our statement that the Council “explicitly recognized” the Applicant’s right to cross-examine the signatories to determine whether they have standing. While our use of the phrase “explicitly recognized” may be disputed; our determination that the Applicant is entitled to challenge and even cross-examine the signatories to a protest petition is not.

According to the Committee Report, “. . . Patrick Allen noted [in] his opposition to section 25-601 . . . [that the group requirement] is merely an invitation to further litigation in which the applicant’s lawyers cross examines the protestants about the grounds that they share for the protest. Council of the District of Columbia, Committee on Consumer and Regulatory Affairs, Report on Bill 13-449, the “Title 25, D.C. Code Enactment and Related Amendments Act of 2000,” 135 n. 64 (Nov. 20, 2000). The Council included this testimony in its explanation of § 25-601 and implemented the provision without disputing this testimony. Therefore, if we must change the phrase “explicitly recognized” to “implied,” or some other phrase, then so be it—it does not change our ultimate conclusion.

¹⁴ In its Committee Report, the Council, in discussing the group standing requirement, stated, “The Committee does feel there are some grounds for limiting ‘lone protestants’ and is willing to implement this provision.” Report on Bill 13-449, at 135.

precedent that contradicts this view. Mot. for Recon., 29. Therefore, we see no reason to depart from our long-held interpretation.¹⁵

V. THE BOARD PROVIDED ADEQUATE NOTICE OF ITS PRIOR ORDER TO THE 2700 VIRGINIA AVENUE GROUP.

ABRA provided adequate and reasonable notice of the Board's Order to the 2700 Virginia Avenue Group by providing the Order to Judge Newman and Cynthia Walker's counsel.

Under D.C. Official Code § 2-509 of the D.C. Administrative Procedure Act, "In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be." D.C. Code § 2-509 (West Supp. 2013). Under § 25-444, "The parties to the protest hearing shall be the applicant and the protestants as identified at the administrative review." D.C. Code § 25-444(b) (West Supp. 2013). Under § 25-601(2), "A group of no fewer than 5 residents or property owners of the District sharing common grounds for their protest . . ." is an entity entitled to "protest the issuance . . . of a license . . ." D.C. Code § 25-601(2) (West Supp. 2013). Under § 1703.2, "Any papers required to be served upon a party may be served upon the party or the party's designated representative." 23 DCMR § 1703.2 (West Supp. 2013). Finally, § 1703.5(g) states, "Service upon a party shall be completed upon any of the following acts: . . . [b]y an action in conformity with an Order of the Board in any proceeding." 23 DCMR § 1703.5(g) (West Supp. 2013).

At the initial hearing in this matter, our Agent identified the 2700 Virginia Avenue Group as a group with standing to protest the Application under § 25-601(2). In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at ¶ 17. Judge Newman and Cynthia Walker—the Individual Petitioners—were identified by our Agent as part of this group. Id. at ¶¶ 14, 16. At the May 8, 2013 hearing, Erica Mueller specifically identified herself as representing the protestants. Supra, ¶¶ C-F (Findings of Fact). Based on this appearance, we then stated that service on counsel constituted service on the entire 2700 Virginia Avenue Group. Id. at 18.

Counsel retorted in her Motion for Reconsideration that she only represents Judge Newman and Ms. Walker; therefore, she does not represent the other members of the 2700 Virginia Avenue Group, and has no duty to deliver the Order to them. Mot. for Recon., 31 n. 24. We disagree.

¹⁵ We note that the Individual Petitioners fail to mention in their motion that the court also said in Coumaris that ". . . judicial deference is at its zenith when an administrative construction of a statute has been consistent and of long standing . . ." Coumaris v. District of Columbia Alcoholic Beverage Control Board, 660 A.2d 896, 900 (D.C. 1995). Because the Individual Petitioners' construction of our statutes and regulations does not accord with the language used and is unreasonable, we see no reason to depart from our long-standing practice. See also, Mallof v. District of Columbia Alcoholic Beverage Control Board, 43 A.3d 916, 923 (saying that the court would not defer to the Board's interpretation because it departed from its prior interpretation and citing Coumaris for the proposition that "deference is more appropriate where the interpretation is one of 'long standing'").

Under § 25-601(2), Judge Newman and Cynthia Walker may only maintain a protest as part of a group of residents and property owners sharing common grounds for their protest—not in their individual capacities. Because a group must act in concert to maintain a protest before the Board, service on counsel, who states on the record that she represents the protestants is reasonable under the circumstances. Moreover, the Board explicitly informed counsel in our Order that we intended to complete service on the group by serving the Order on counsel. *Id.* at 18. This portion of our Order satisfied § 1703.5(g), which allows the Board to construct alternative methods of completing service. The Board had no obligation to serve each individual member of the group with a copy of our prior Order. Consequently, our prior Order satisfies § 1703.2's statement that service may be completed by serving the party and the reasonableness requirement of the D.C. Administrative Procedure Act.

Therefore, because we provided reasonable notice of the Board's Order in accordance with § 1703 to the 2700 Virginia Avenue Group, all of the signatories to the 2700 Virginia Avenue Group that failed to file for reinstatement have waived their right to do so.¹⁶

VI. THE BOARD'S PRIOR ORDER IS IN ACCORDANCE WITH § 1601.7.

The Individual Petitioners claim that the Board committed a procedural due process violation by failing to give them notice under § 1601.7 that various individual signatories had been dismissed. Mot. for Recon., 31. This is incorrect.

Section 1601.7 states,

A recommendation by the Board's agent to deny a license application or dismiss a protest for failure to attend the administrative review shall be forwarded to the Board for consideration in writing. The Board's decision to adopt or not adopt the recommendation of the Board's agent to deny a license application or dismiss a protest for failure to appear shall be sent to the parties in writing. A request for reinstatement with the Board must be filed within ten (10) days after notification from the Board of the dismissal or denial. In reviewing the request, the Board shall consider whether, in the discretion of the Board, the party has shown good cause for his or her failure to appear at the administrative review.

23 DCMR § 1601.7 (West Supp. 2013).

Section 1601.7 sets no timeframe within which we must adopt the recommendation of our Agent; therefore, the Board has the discretion to adopt or deny the recommendation of our Agent at any point during the protest process. Here, there was no urgency or need to issue our § 1607.1 decision immediately, because the 2700 Virginia Avenue Group's designated representative at the time, Dr. Smith, did not object to our Agent's standing determination and was content to proceed through the protest process with a reduced

¹⁶ We also note that the 2700 Virginia Avenue Group provided no additional instructions on how to serve or communicate with the group after Dr. Smith withdrew. Consequently, the 2700 Virginia Avenue Group left the manner of notice to the Board's reasonable discretion.

number of residents and property owners as members of his group. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at ¶¶ 16, 19. We note that only after the 2700 Virginia Avenue Group obtained new counsel, did the group raise this issue at the May 8, 2013 hearing. *Tr.*, 5/8/13 at 95. In response, we addressed this issue in our prior Order and permitted the dismissed signatories to file Motions for Reinstatement explaining why they did not appear at the Roll Call Hearing, or appoint a designated representative to attend in their place. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at 16, 18. Therefore, the Board properly satisfied § 1607.1.¹⁷

The Individual Petitioners also claim that the dismissed signatories “were still members of the protest group.” *Mot. for Recon.*, 30. This statement is wrong as a matter of law. Under § 25-444, “The parties to the protest hearing shall be the applicant and the protestants as identified at the administrative review.” § 25-444(b). As of the May 8, 2013 hearing, the official ruling of our Agent was that the 2700 Virginia Avenue Group only had fourteen members. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at ¶ 17. Unless the Board overturns our Agent’s decision, § 25-444(b) demands that only the group recognized by our Agent has standing.¹⁸ Therefore, it is incorrect for the Individual Petitioners to claim that anyone outside of the fourteen members recognized by our Agent had standing after the Roll Call Hearing.

The Board’s prior Order also did not create an obligation to serve each individual signatory a copy of the Order. Under the plain language of § 1607.1, notice is not owed to the individual signatories; instead, it is owed to the party. In this case, the 2700 Virginia Avenue Group is the “party.” Hence, the Board stated in its Order that “the Board shall provide the notice required by § 1601.7, which shall give the dismissed signatories an opportunity to request reinstatement” *Id.* at 18.

Thus, our Order satisfied the requirements of § 1601.7, because we provided reasonable and adequate notice of our Order to the 2700 Virginia Avenue Group by sending the Order to Ms. Mueller in accordance with our Order.

¹⁷ An additional issue with the Individual Petitioners § 1601.7 claim is that there is no further remedy that the Board can provide them as a matter of law. Section 1601.7 simply requires the Board to provide a dismissed protestant with notice that they have been dismissed, and provide them with an opportunity to file a Motion for Reinstatement. § 1601.7. We did this in our prior Order; therefore, there is nothing left for the Board to provide the dismissed signatories.

¹⁸ The interpretation forwarded by the Individual Petitioners would also be extremely prejudicial to applicants coming before the Board. First, the Individual Petitioners’ interpretation would interfere with the negotiation of settlement agreements, because the applicant would not know whom he or she was negotiating with and whether such an individual truly represented the entire group. Second, their interpretation would mean that applicants could not rely on the ruling of our Agent, thus, giving applicants a claim that they failed to challenge or investigate a party’s standing at the roll call hearing, because they were misled by our Agent’s ruling. As a result, the interpretation forwarded by the Individual Petitioners is simply a recipe for an “administrative nightmare.”

VII. THE BOARD WAS ENTITLED TO INVESTIGATE THE 2700 VIRGINIA AVENUE GROUP'S STANDING AT THE MAY 8, 2013 HEARING.

We also note that we are entitled to raise the issue of standing and reevaluate the standing of the parties at any point during the protest process. It is well-settled that "Lack of standing may be raised at any time, and even *sua sponte* by an adjudicative body. Speyer v. Barry, 588 A.2d 1147, 1159 (D.C. 1991).¹⁹ Therefore, the Board was entitled to reconsider the 2700 Virginia Avenue Group's standing at the May 8, 2013 hearing; especially, when faced with a number of withdrawals by individual signatories and our Agent's questionable ruling regarding the standing of the parties. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at ¶ 17, 12-16.

VIII. THE 2700 VIRGINIA AVENUE GROUP NO LONGER SHARES COMMON GROUNDS UNDER § 25-601(2) BASED ON THE GROUP'S KNOWING REFUSAL TO ACT AS A GROUP.

Based on the record before us, we also find that the 2700 Virginia Avenue Group lacks sufficient common grounds to maintain the protest based on the refusal of the group to act as a single entity or act with the approval of the majority of its members.

We note the following relevant facts: In their reply, submitted on August 15, 2013, the Individual Petitioners write ". . . our understanding is that seven of these individuals are aware of the Board's decision and have filed with the Board petitions for reinstatement and in support of the Petitioners' brief for reconsideration." Reply to Opp., 5. We note that the original Motion for Reconsideration was filed with ABRA on August 6, 2013. The Motions for Reinstatement all state that the filers support the Motion for Reconsideration filed by Judge Newman and Ms. Walker submitted through counsel; yet, the Motions for Reinstatement were filed on August 5, 2013—one day before the Motion for Reconsideration was filed. Mot. for Reinstatement, 1 (Kathleen Burney); Mot. for Reinstatement, 1 (Robert Burney); Mot. for Reinstatement, 1 (Goda); Mot. for Reinstatement, 1 (Jennings); Mot. for Reinstatement, 1 (Kellogg); Mot. for Reinstatement, 1 (Schneider); Mot. for Reinstatement, 1 (June Walsh); Mot. for Reinstatement, 1 (Michael Walsh).

In addition, the Individual Petitioners make several factual statements on behalf of all of the signatories to the petition that we cannot credit unless they or their counsel are in contact with the other signatories to the 2700 Virginia Avenue Group's petition. We note that in their reply, the Individual Petitioners' state,

¹⁹ We also recall that in a recent unpublished decision involving the Board, the Court of Appeals stated, "It is well-settled that standing is a jurisdictional matter, jurisdiction is not waivable, and that the issue of standing can be raised at any time during a proceeding and may be raised by the adjudicating body *sua sponte*. Don Padou and Abigail Padou v. District of Columbia Alcoholic Beverage Control Bd., No. 10-AA-1298, 3 (D.C. 2012) (unpublished). Thus, the court found that the Board was entitled to revoke a group's standing at a status hearing, even though the group may have been granted standing at a roll call hearing. Id. at 3-4.

As the Board designated Dr. William Smith represent Protestant,²⁰ other individuals who wished to protest as part of the group reasonably believed that Dr. Smith would be representing their interests at the protest hearing. When Dr. Smith withdrew from participating in the protest at the last minute, only a few days before the protest hearing, the group accordingly had to quickly adjust plans to accommodate Dr. Smith's sudden absence.

Reply to Opp., 5 n. 5. Finally, as we found above, the Individual Petitioners have the addresses of the other members of the group; therefore, they have the ability to get in contact with one another.

Under § 25-601(2), a group must “shar[e] common grounds,” and is only considered one party under Title 25. § 25-601(2). The Board determines that the *sine qua non*—or, the essential essence—of a group under the plain language of § 25-601(2) is that it must share the same issues and act as a single unit. When a group knowingly fails to act as a single unit in accordance with the “common ground” requirement of § 25-601(2), it is no longer a group. Instead, it is merely a disorganized bunch of individuals asserting individual claims.

Here, counsel for the Individual Petitioners claims that it is only able to represent Judge Newman and Ms. Walker. Mot. for Recon., 1, 1 n.1, 31, n. 24. Yet, as we stated in our prior Order, both Michael Walsh and Judge Newman remain as members. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at 14. Here, there is no indication that Mr. Walsh supports the Motion for Reconsideration, or has even been informed that it has been filed on the group's behalf.²¹ Therefore, we cannot determine whether this motion reflects the views of the entire 2700 Virginia Avenue Group. As a result, the Individual Petitioners cannot claim that they have the support of the majority of the 2700 Virginia Avenue Group and have no right to file a Motion for Reconsideration affecting the group's rights without the authorization of the group.

Furthermore, the statements made by counsels to the Individual Petitioners show that the group remains in contact with each other and is coordinating its legal actions before the Board. First, we find it strange that the Motions for Reinstatement were filed on August 5, 2013 and claimed that the filers supported the Motion for Reconsideration, which was filed a day later, on August 6, 2013. Clearly, the individuals requesting reinstatement knew that the Individual Petitioners intended to file a Motion for Reconsideration before it was filed. Second, we find it impossible for the Individual Petitioners to know, in response to Dr. Smith's withdrawal, (1) what the rest of the group believed; (2) whether the other signatories were aware of Dr. Smith's withdrawal; and (3) the actions the signatories took after Dr. Smith's withdrawal unless the Individual Petitioners are in contact with the other signatories. Third, we find it inexcusable for counsel to file a motion that impacts the rights of the other signatories without getting the

²⁰ This statement is misleading. Our Agent at the Roll Call Hearing asked the 2700 Virginia Avenue Group to appoint a designated representative and Dr. Smith volunteered without objection from anyone in the group. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at ¶ 15.

²¹ We note that the Individual Petitioners claim Mr. Walsh as part of the group. Reply in Supp. Of Pet. for Recon., 3.

authority to represent the entire group; especially, when counsel has the means to get in contact with the other signatories.²²

For this reason, it is apparent to the Board that even though the group is communicating and coordinating its legal case against the Applicant; the 2700 Virginia Avenue Group knowingly refuses to act as a single unit, and is acting without the permission of the majority of the members. Therefore, separate and apart from our determination in our prior Order, we further determine that the 2700 Virginia Avenue Group does not share common grounds and lacks standing as a group of five or more residents and property owners under § 25-601(2).

IX. THE BOARD DENIES THE MOTIONS FOR REINSTATEMENT ON THE MERITS BECAUSE THE INDIVIDUAL SIGNATORIES LACK GOOD CAUSE FOR FAILING TO APPEAR AT THE ROLL CALL HEARING.

We next address the Motions for Reinstatement filed by the Individual Signatories.

As a preliminary matter, we agree with the Applicant that we cannot reinstate Kathleen Burney and Robert Burney. As Paragraph 4 of our prior Order shows, Kathleen Burney and Robert Burney were never signatories to the petition filed by the 2700 Virginia Avenue Group. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at ¶ 4; 14. As a result, they have waived their right to participate in the protest process by not signing the original petition filed timely with the Board. Id. at 14 citing D.C. Code § 25-602. Therefore, as the Applicant noted, “as to the Burneys, there is nothing to reinstate.” Resp. to Opp. to Pet. for Reinst., 1.

We dismiss the remaining Individual Signatories—Mr. Goda, Ms. Jennings, Dr. Kellogg, Mr. Schneider, and Ms. Walsh—for failing to appear at the Roll Call Hearing, on the merits, and in accordance with our regulations—§§ 1601.5, 1601.6, and 1603.3 of Title 23.

First, the Individual Signatories, except for June Walsh, claim they “did not receive notice from the Board that [they were] required to appear at the Roll Call Hearing and was unaware that [their] failure to appear would result in my individual dismissal.” Mot. for Reinstatement, 1 (Goda); Mot. for Reinstatement, 1 (Jennings); Mot. for Reinstatement, 1 (Kellogg); Mot. for Reinstatement, 1 (Schneider). We note that the Individual Petitioners similarly raise this argument in their Motion for Reconsideration. Mot. for Recon., 30.

Factually, this statement is incorrect. First, as described in Paragraph 2 of our prior Order, the notice provided on the public placard and in the D.C. Register informed the public that the Board would hear objections to the Application at the February 25, 2013

²² Counsel for the Individual Petitioners has also requested that we allow Jerry Waldman to join the group; however, counsel has explicitly limited its representation to Judge Newman and Ms. Walker. Mot. for Recon., 27 n. 20, 31, n. 24. Therefore, we fail to see how counsel has the authority or standing to make this request. Regarding Ms. Walker’s exclusion as a member of the 2700 Virginia Avenue Group, counsel’s arguments regarding our interpretation of the relevant statutes and regulations are conclusory and do not address the points we raised based on the plain language of the statutes and regulations at issue; therefore, we see no reason to reverse our decision on this point. Mot. for Recon., 27 n. 20; see also id. at 15-16.

Roll Call Hearing. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at ¶ 2. Second, as described by Paragraph 3 of our prior Order, Mr. Goda, Ms. Jennings, Dr. Kellogg, Mr. Schneider, and Ms. Walsh were sent a letter from ABRA's Community Resource Advisory, dated February 13, 2013, which informed them that they "must appear for the Roll Call Hearing in person or provide a written statement designating a representative who must appear for the hearing on [their] behalf." Id. at ¶ 3. As a result, the Individual Signatories were well aware that they had to appear at the Roll Call Hearing in person or appoint a designated representative to appear in their place.

We also emphasize that our decision to dismiss Dr. Kellogg, Ms. Jennings, Ms. Walsh, Mr. Schneider, and Mr. Goda is based on our regulations—§§ 1601.5, 1601.6, and 1603.3 of Title 23. In re Watergate Hotel Lessee, LLC, Board Order No. 2013-293, at 10-12. Neither the Individual Signatories or the Individual Petitioners present any legal support for the position that, as a matter of law, they were entitled to special, independent notice of the Board's existing procedural regulations. As a result, this notice argument provided by the Individual Signatories and the Individual Petitioners has no merit in fact or law.²³

Second, the Individual Signatories claim they did not receive notice of their dismissal from the protest. Mot. for Reinstatement, 1 (Goda); Mot. for Reinstatement, 1 (Jennings); Mot. for Reinstatement, 1 (Kellogg); Mot. for Reinstatement, 1 (Schneider); Mot. for Reinstatement, 1 (June Walsh). For the reasons stated above, in Section V, service of our Order on counsel for the Individual Petitioners satisfied the notice requirements required by the District of Columbia Administrative Procedure Act and our regulations. This claim is also moot, because our Order addresses their Motions for Reinstatement on their merits.

On the merits, we deny the Motions for Reinstatement for failing to state good cause for failing to appear at the Roll Call Hearing. According to § 1601.6,

Failure to appear at the administrative review hearing either in person or through a designated representative may result in denial of the license application or dismissal of a protest unless good cause is shown for the failure to appear. Examples of good cause for failure to appear include, but are not limited to:

- (a) sudden, severe illness or accident;
- (b) death or sudden illness in the immediate family, such as spouse, partner children, parents, siblings;
- (c) incarceration; or
- (d) severe inclement weather.

23 DCMR § 1601.6 (West Supp. 2013).

²³ The only notice the Board is required to give the public regarding an application is the statutory notice required by §§ 25-421 and 25-423.

We note that Dr. Kellogg claims that she was unable to attend because she is a physician and could not leave her patients; Ms. Jennings claims that she was in India on business; Mr. Schneider claims that he was “working”; Mr. Goda claims that he has a “back problem that sometimes keeps [him] immobile”; and Ms. Walsh claims that she was ill and confined to bed. Mot. for Reinstatement, 1 (Goda); Mot. for Reinstatement, 1 (Jennings); Mot. for Reinstatement, 1 (Kellogg); Mot. for Reinstatement, 1 (Schneider); Mot. for Reinstatement, 1 (June Walsh).

We are persuaded by the Applicant that none of these arguments are sufficient. Resp. to Opp. to Pet. for Reinst., 2. As the Applicant argues, it appears that Dr. Kellogg, Ms. Jennings, and Mr. Schneider had “higher priorities” that day, but could not be bothered to appoint a designated representative. *Id.* Furthermore, the motions filed by Mr. Goda and Ms. Walsh do not provide sufficient information to determine whether their illnesses were “sudden . . . illness[es],” or explain why they could not appoint a designated representative. *Id.*

We also do not credit Ms. Walsh’s claim that Michael Walsh served as her designated representative on the day of the Roll Call Hearing. Mr. Walsh never spoke up on his wife’s behalf during the hearing; therefore, neither the Board nor the Applicant had any notice that he intended to serve as his wife’s designated representative. *Id.* at 3.

ORDER

Therefore, for the foregoing reasons, the Board, on this 2nd day of October 2013, hereby **AFFIRMS** Board Order No. 2013-293.

IT IS FURTHER ORDERED that the Motion for Reconsideration filed by the Individual Petitioners is **DENIED**, because the Individual Petitioners are not entitled to file a motion for reconsideration in their individual capacities under § 25-433(d)(1).

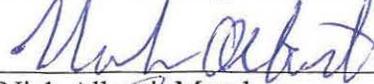
IT IS FURTHER ORDERED that the Motions for Reinstatement filed by Kathleen Burney and Robert Burney are **DENIED**, because they are not signatories to the petition filed by the 2700 Virginia Avenue Group; therefore, they are not entitled to become parties to this matter.

IT IS FURTHER ORDERED that the Motions for Reinstatement filed by Herbert Goda, Victoria Jennings, Patricia Kellogg, William Schneider, and June Walsh are **DENIED** on the merits for the reasons stated in this Order.

IT IS FURTHER ORDERED, separate and apart from our standing determination in our prior Order, that the 2700 Virginia Avenue Group lacks common grounds under § 25-601(2); therefore, we deny the group standing on this ground as well.

Copies of this Order shall be sent to counsel for the Individual Petitioners, Kathleen Burney, Robert Burney, Herbert Goda, Victoria Jennings, Patricia Kellogg, William Schneider, and June Walsh, counsel for the Waldman Group, ANC 2A, and the Applicant.

District of Columbia
Alcoholic Beverage Control Board

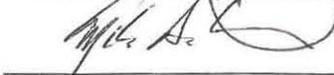


Nick Alberti, Member



Donald Brooks, Member

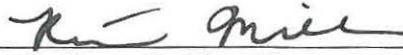
Herman Jones, Member



Mike Silverstein, Member

I concur with the majority opinion that petitioners' motion for reconsideration should be denied for lack of standing. However, I disagree with the majority's conclusion set forth in Section VIII of the Order that the petitioners do not share common grounds because they are not litigating as one party. In my view, the Council intended the term "common grounds" to refer to conditions the petitioners share with respect to the application, such as living in the same proximity of a proposed establishment.

The fact that only two petitioners filed the motion for reconsideration, and other individual petitioners filed individual petitions for reinstatement merely underscores the Board's conclusion set forth in Section I, that counsel for petitioners does not represent the group that was given standing at Roll Call and that that group no longer exists as a party of five or more.



Ruthanne Miller, Chairperson

Under 23 DCMR § 1719.1 (2008), 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, under 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration under 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).