

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

In the Matter of:

Costco Wholesale Corporation)
t/a Costco Wholesale #1120)

Application to Transfer a)
Retailer's Class A License)

at premises)
2441 Market Street, N.E.)
Washington, D.C. 20018)

Case Number: N/A
License Number: 089498
Order Number: 2013-005

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

ALSO PRESENT: Costco Wholesale Corporation, t/a Costco Wholesale #1120,
Applicant

Kristina A. Crooks and Roderick L. Woodson, Esq., of the firm
Holland & Knight, LLP, on behalf of the Applicant

John Ray, Esq., of the firm Manatt, Phelps & Phillips, LLP, on
behalf of the Independent Gas Station Operators Alliance (Alliance)

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING MOTION FOR RECONSIDERATION

This case arises from the Application to Transfer a Retailer's Class A License to a New Location (Application) submitted by Costco Wholesale Corporation, t/a Costco Wholesale, (Applicant) at 2441 Market Street, N.E., Washington, D.C. *Licensing File No. 089498*, Notice of Public Hearing (May 11, 2012). Upon receipt of the Application, the Alcoholic Beverage Regulation Administration (ABRA) posted the following Notice of Public Hearing (Notice) on May 11, 2012, which advised the public that the Applicant applied for a Retailer's Class A License:

This is a Class “A” Retailer’s License (405.1) that is in Safekeeping and is being transferred to a new location. It is a membership-based, retailer/wholesaler of general merchandise and services. Services include photo processing, pharmacy, optical, hearing aids, tire services (installation & sales) deli, bakery and small food restaurant (no alcohol sales for on premise consumption).

ABRA Licensing File No. 089498, Notice of Public Hearing.

The Notice then informed the public that the last day to submit an objection to the Application was June 25, 2012. Id. We then approved the Application on July 18, 2012, because we did not receive any timely objections, and we determined that the Application met the qualifications for licensure. Board Agenda, 14 (Jul. 18, 2012); see also 23 DCMR § 1505.1 (There shall be a presumption that a license is appropriate for an establishment if, after public notice is given under this chapter, no objection to the license is filed with the Board.)

On September 20, 2012—long after the June 25, 2012 deadline passed—the Alcoholic Beverage Control Board (Board) received a protest petition from the Independent Gas Station Operators Alliance (Alliance). Letter from John Ray, Esq., Counsel, Manatt, Phelps & Philips, LLP, to Chairperson Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board (Sept. 19, 2012) [Protest Petition]. The late-filed petition asked the Board to revoke our previous decision to approve the Application. Protest Petition, 1.

The Alliance argued that the Notice was inadequate because it failed to adequately inform the public of the Applicant’s operations; namely, that the Applicant intended to sell gasoline at its proposed location. Protest Petition, 1. Nevertheless, based solely on the briefs and evidence submitted by the parties, we denied the petition, because we had no reason to believe that the Applicant intended to sell gasoline while holding an off-premise retailer’s license in violation of D.C. Official Code § 25-313. In re Costco Wholesale Corporation t/a Costco Wholesale #1120, Case No. N/A, Board Order No. 2012-499, 3-4 (D.C.A.B.C.B. Nov. 20, 2012). Therefore, we deemed the petition untimely, did not grant the Alliance standing to protest the Application, and reaffirmed our issuance of a license to the Applicant. Id. at 4.

The Alliance then filed an amended petition for appellate review with the District of Columbia Court of Appeals on November 16, 2012. Following this submission, Michael Williams, Cynthia Moore, Mary Williams, Carrie Doles, and Zell Taylor—a small faction within the Alliance—submitted a Motion for Reconsideration (Motion).¹ The Applicant then filed a timely objection to the Motion for Reconsideration.

¹ It is unclear how counsel can claim that these individuals are not part of the Alliance, when they all signed and submitted letters to the Board that stated, “I . . . the undersigned, as part of the Independent Gas Station Operators Alliance . . . do hereby designate John Ray . . . to serve as my representative” Mot. for Recon., 1; Protest Petition, Exhibit 3 (The Alliance submitted signed letters of designation from Michael Williams, Mary Williams, Cynthia Moore, Carrie Doles, and Zell Taylor claiming that they are part of the Alliance). We note that whether these individuals are or are not part of the Alliance has no bearing on the Board’s decision in this matter.

We summarily deny this Motion, because it will disrupt the appeal filed by the Alliance. We note that if the Board took any action, other than denying the motion, this would strip the District of Columbia Court of Appeals of jurisdiction and force the court to deem the amended petition for review submitted by the Alliance as premature. District of Columbia Dept. of Employment Services v. Vilche, 934 A.2d 356, 359-60 (D.C. 2007) (saying that when a petition for review is submitted before a motion for reconsideration at the agency level, the court only has jurisdiction when the agency denies the motion for reconsideration).

ORDER

Therefore, the Board, on this 9th day of January 2012, hereby **ORDERS** that the Motion for Reconsideration is **DENIED**.


District of Columbia
Alcoholic Beverage Control Board



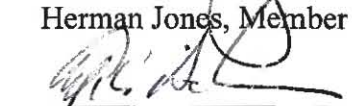
Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, Member

I dissent because I believe the Board should hold a Fact Finding Hearing on the allegations raised by the Alliance.



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).