DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE, Suite 9100
Washington, DC 20002-4210

IN THE MATTER OF: NATIONAL SOCIETY OF THE DAUGHTERS OF THE AMERICAN REVOLUTION T/A D.A.R. CONSTITUTION HALL Respondent	Case No.: CR-C-08-100103

FINAL ORDER

I. Introduction

This case arises under the D.C. Public Hall Regulation Amendment Act of 1992 (D. C. Official Code § 47-2820) which governs the issuance of business entertainment licenses and Title 19, Chapter 16 of the District of Columbia Municipal Regulations ("DCMR") governing Public Halls.

By letter dated February 25, 2008, the Department of Consumer and Regulatory Affairs ("DCRA") notified Respondent, the National Society of the Daughters of the American Revolution t/a D.A.R. Constitution Hall, that a public hearing for the renewal of its Public Hall License for premises located at 311 18th Street, N.W. (the "Property"), had been scheduled for April 1, 2008, with the Office of Administrative Hearings ("OAH").

At the hearing, David Lang, appeared on behalf of the Government along with

Radeena Washington, Program Manager of the DCRA Business License Division.[1] Paul Guilderson, Respondent's Managing Director, and Gilbert Vickers, Respondent's Operations Manager appeared on behalf of Respondent. Ms. Washington and Mr. Vickers testified at the hearing.

II. Findings of Fact

On February 27, 2008, Mr. Vickers obtained two placards from DCRA which he posted in front of the building on the Property. The placards stated that Respondent had applied for renewal of its Basic Business License, Entertainment Endorsement (with a category of Public Hall) for the Property. It further stated that that anyone residing within 600 feet of the Property could file objections to the License renewal with DCRA and that a public hearing would be convened on April 1, 2008, at Room 9100, 941 North Capitol Street, N.E., to hear such objections. The placards remained continuously posted at this location from February 27th through the date of the hearing.

No one filed any objections with the DCRA regarding the License renewal.

III. Conclusions of Law

D. C. Official Code § 47-2820 (b-1)(1)(B) provides that an applicant seeking the grant or renewal of a business license with an entertainment endorsement must post two notices for a period of four weeks outside the premises.[2] The notice must advise residents and owners of

[1] Mr. Lang, a DCRA Civil Infractions Advocate, appeared because no representative from the DCRA's Business Licensing Division was present at the time the hearing commenced. Mr. Lang moved for a continuance, which I denied. I then granted Mr. Lang's request for a five minute recess to enable him to contact an appropriate DCRA representative. Ms. Washington appeared shortly after the recess.

[2] D. C. Official Code § 47-2820 (b-1)(1) (B) and (C) provide:

residential property located within 600 feet of the property of their right to object to the license. If an objection is filed the Mayor must conduct a hearing.[3] D. C. Official Code § 47-2820 (b-1)(1)(C).

19 DCMR 1609.1 provides:

> If no objections to an application for a license have been timely filed and the applicant has complied with all of the requirements for licensure, the Director shall issue the license.

19 DCMR 1609.2 provides:

> If timely objections have been filed, the hearing on the objections shall be conducted by the Office of Adjudication pursuant to the procedural rules set forth in 1 DCMR §§ 1107, 1109, 1111 through 1113, 1120, and 1121, except where inconsistent with this chapter.[4]

> (B) The applicant shall post 2 notices for a period of 4 weeks in conspicuous places on the outside of the premises. The notices to be posted shall state that any resident or owner of residential property within 600 feet of the boundary lines of the lot upon which is situated the establishment for which the license is requested who objects to the license is entitled to be heard before the granting or renewal of the license and shall name the same time and place for the hearing as set out in the notice mailed and published by the Mayor.
>
> (C) If an objection to the granting or renewal of the license is filed, no final action shall be taken by the Mayor until the resident or owner of residential property within 600 feet of the boundary lines of the lot upon which is situated the establishment for which the license is requested who objects has an opportunity to be heard, under the rules and regulations to be issued by the Mayor.

[3] Mayor's Order 92-130 delegates to the Director of DCRA the authority to implement these provisions.

[4] The OAH Establishment Act of 2001 grants OAH jurisdiction over "adjudicated cases" formerly heard by the DCRA Office of Adjudication subject to the limitation discussed *infra.* § 2-1831.03. Additionally, OAH's procedural rules apply in this proceeding. 1 DCMR 2800.1

In this case, Respondent properly posted the placards providing notice of its application to renew its license and notice of the opportunity for persons residing within 600 feet of the Property to object.. No one filed any objection with the DCRA. The governing statue and regulations require a hearing only if a person that is entitled to object files timely objections. When no objections are filed, DCRA must determine if "the applicant has complied with all of the requirements for licensure." 19 DCMR 1609.1. Upon the applicant's compliance "the Director shall issue the license." *Id.*

This procedure is consistent with OAH's subject matter jurisdiction which extends to "all cases to which [the OAH Establishment Act of 2001] applies." D.C. Official Code § 2-1831.02(a). The OAH Act applies to "adjudicated cases."

> "Adjudicated case" means a *contested case* or other administrative adjudicative proceeding before the Mayor or any agency that results in a final disposition by order and in which the legal rights, duties, or privileges of specific parties are required by any law or constitutional provision to be determined after an adjudicative hearing of any type. The term "adjudicated case" includes, without limitation, any required administrative adjudicative proceeding arising from a charge by an agency that a person committed an offense or infraction that is civil in nature.

D.C. Official Code § 2-1831.01 (emphasis added)

D.C. Official Code § 2-502(8) defines a "contested case" as:

> [A] proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law (other than this subchapter), or by constitutional right, to be determined after a hearing before the Mayor or before an agency, but shall not include:
>
> (A) Any matter subject to a subsequent trial of the law and the facts de novo in any court;
>
> (B) The selection or tenure of an officer or employee of the District;

> (C) Proceedings in which decisions rest solely on inspections, tests, or elections; and

In this case, OAH must preliminarily determine if the Respondent posted the requisite notice thus complying with D. C. Official Code § 47-2820 (b-1)(1) (B) and 19 DCMR 1606. *See* 19 DCMR 1609.3.[5] OAH must also consider whether any objections were filed in response to Respondent's renewal application. If an applicant fails to properly post the notice and the public or the government is thereby prejudiced, the administrative law judge is directed to reschedule the hearing. *Id.* If the notice complies with the applicable statute and regulation, and objections have been timely filed, OAH must conduct a hearing. 19 DCMR 1609.2. When there are no objections, a hearing is not required by any law or constitutional provision. Under these circumstances, an adjudicated case does not exist and OAH has no further jurisdiction.

I conclude that Respondent properly posted the requisite notice in compliance with D. C. Official Code § 47-2820 (b-1)(1) (B) and 19 DCMR 1606. Moreover, no objections have been filed to Respondent's renewal of the License. Therefore, based upon the available record, this matter is not an adjudicated or contested case and OAH does not have jurisdiction at this time to determine if the applicant has complied with all other requirements for licensure. DCRA may proceed to take action on the renewal application in accordance with applicable law.

III. Order

---

[5] 16 DCMR 1609.3 provides:

> If the Administrative Law Judge determines that the notices required to be posted by the applicant have not remained visible to the public for the full twenty-eight (28) day period, and the public or the government has been prejudiced, the Administrative Law Judge may reschedule the hearing to a date up to thirty (30) days later.

Based upon the foregoing findings of fact and conclusions of law, it is this _____ day of _____ 2008:

ORDERED, that since no objections were filed to Respondent's License renewal application, no hearing shall be conducted to determine if Respondent has complied with all substantive requirements for licensure**;** and it is further

ORDERED, that DCRA shall determine if Respondent has complied with all such requirements and shall issue the renewal License to Respondent upon its compliance; and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

Dated: April 4, 2008

/s/_____
Louis J. Burnett
Administrative Law Judge