



STATE OF DELAWARE  
**OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**

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J.A.R. Beverage, Inc.  
t/a Gold Room  
800 Maryland Avenue  
Wilmington, DE 19805

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**DECISION AND ORDER**  
Protested Application

SUMMARY OF EVIDENCE

1. The above entity (“Applicant”) filed an application for a taproom license, to include Sunday sales (“Application”).
2. A valid protest was filed against the Application, requiring a public hearing on the Application. See 4 Del. C. § 541.
3. The Commissioner held a public hearing on the protested Application on April 19, 2022 at 5 p.m. via Webex, in accordance with Delaware law.
4. Exhibits 1 through 40 were noted for the record.
5. No one on behalf of the Applicant pre-registered to testify or appeared at the hearing.
6. No protestors who signed or submitted a protest to the Application pre-registered to testify or appeared at the hearing.<sup>1</sup>

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<sup>1</sup> A “party” is defined by the Administrative Procedures Act as “each person or agency named or admitted in any agency proceeding as a party, or properly seeking and entitled as of right to be admitted as a party to an agency proceeding.” 29 Del. C. § 10102(g). A person acting as a “party” at a hearing would be evidenced by the person’s actual participation as a member of a group, testifying, cross-examining witnesses, and arguing a position. *Newsome v. Delaware Alcoholic Beverage Control Comm.*, 1993 WL 258712 at \*2 (Del. Super. July 1, 1993).

7. This Office noted on the record that notice of the Hearing, scheduled for 5 p.m. on April 19, 2022, was sent to the Applicant by U.S. Mail and by email.

8. This Office noted on the record that Exhibit 40 was an email confirming that counsel for the Applicant had withdrawn his legal representation of the Applicant and would not be appearing at the public hearing.

9. Exhibit 13 of the Application, which was made part of the record during the hearing, was the lease for the proposed establishment, dated July 1, 2020. The lease included a termination date of September 31, 2020 should Applicant fail to obtain approval for a liquor license. No addendum to the lease was received by the Office.

10. Exhibits 25 and 32, also read into the record during the hearing, were photographs of two separate cease and desist notices, one dated January 5, 2021 and one dated September 15, 2021 that were posted on the proposed premises of the Applicant's proposed establishment. The notices stated the business failed to obtain a business license to operate in violation of Wilmington City Code Ordinance, Section 5-34. These photographic images were taken by staff of this Office.

11. During the hearing, this Office confirmed there were three attendees at the hearing, each of whom verified that they were not appearing on behalf of or associated with the Applicant. No attendee raised their hand to indicate they wished to testify.

12. At approximately 5:18 p.m., this Office confirmed that no one had appeared at the public hearing for the Applicant. This Office reserved decision on the Application and adjourned the hearing.

13. Since April 19, 2022, Applicant has not contacted the Office to explain the failure to attend the protest hearing in support of its Application or inquire about the status of the Application.

### FINDINGS OF FACT

This Office makes the following findings of fact based upon the evidence presented, pursuant to 29 Del. C. § 10128(b)(2):

1. A public hearing on the Applicant's protested Application was scheduled for 5 p.m. on April 19, 2022.
2. As part of its Application, the Applicant provided this Office with its mailing address, electronic mail address, phone numbers and other contact information.
3. Notice of the April 19, 2022 hearing was sent to the Applicant by U.S. Mail and email to the Applicant's most recent mailing address and electronic mail address on file with this Office.
4. Such notices were not returned to this Office, and this Office was not notified that they were undeliverable.
5. No one for the Applicant pre-registered to testify or appeared at the Hearing.
6. No protestor pre-registered to testify or appeared at the Hearing.
7. Applicant has failed to contact the Office since April 19, 2022.

### CONCLUSIONS OF LAW

This Office makes the following legal conclusions pursuant to 29 Del. C. § 10128(b)(3):

1. The Commissioner may grant, refuse or cancel licenses as required by the Delaware Liquor Control Act ("Act"), but she is not empowered to reject an application unless the applicant has failed to comply with statutory requirements or unless the Commissioner has reasonable grounds to believe that a statutory basis for refusal exists. See 4 Del. C. § 304(a)(4).<sup>2</sup>

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<sup>2</sup> *Park Distributing Co. v. Delaware Liquor Comm.*, 54 A.2d 551, 557 (Del. 1947)

2. A protest is a jurisdictional requirement that triggers a hearing in order for evidence to be presented on the record and is not in itself material evidence of opposition.<sup>3</sup> In this case, protest letters with signatures were submitted to this Office. A public hearing was held for this Office to consider the Application and the objections of the protestors placed into evidence in the record at the hearing.

3. Despite sufficient notice of the Hearing to the Applicant and the protestors, no one appeared at the Hearing for either party. No evidence in support of or against the Application was presented for this Office to consider.

4. Based upon the record before it, including whether Applicant has a valid lease for the premises to be used and whether Applicant has been operating a business at the location without appropriate municipal licensing, this Office cannot conclude the Application meets the requirements for a taproom license, to include Sunday sales. This Office does not have complete, credible evidence on which to consider the Application for a taproom at this time.

#### DECISION AND ORDER

IT IS THIS 27 day of July, 2022, the Decision and Order of this Office that the Application for a taproom, to include Sunday sales, is denied.

IT IS SO ORDERED.



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The Honorable Jacqueline Paradee Mette, Esq.  
Commissioner

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<sup>3</sup> *Alfred I. Dupont Sch. Dist., v. Delaware Alcoholic Beverage Control Comm.*, 343 A.2d 600, 603 (Del. Super. 1975).

### Right of Appeal

4 Del. C. § 304(b):

(b) The Commissioner's decision shall be final and conclusive unless, within 30 days after notice thereof has been mailed by the Commissioner's office, a party to such hearing files an appeal in the office of the Commissioner. Upon receipt of the appeal, the Commissioner shall cause the Chairperson of the Appeals Commission to be advised of the pending appeal and the Chairperson shall cause the Commission to be convened with at least 20 days' notice to all parties. The appeal shall be heard by the Appeals Commission, who shall, in accordance with the Administrative Procedures Act, Title 29 of the Delaware Code, review the matter on the record and affirm, reverse or modify the decision of the Commissioner.