

Norman M. Glasgow, Jr.  
202 419 2460  
norman.glasgowjr@hklaw.com

November 14, 2008

VIA HAND DELIVERY

D.C. Board of Zoning Adjustment  
441 4<sup>th</sup> Street, N.W.  
Suite 210-S  
Washington, DC 20001

Re: **BZA Appeal No. 17830 of L. Napoleon Cooper, et al.**  
**Supplemental Motion to Dismiss the Appeal and Opposition to Postponement**

Honorable Members of the Board:

On behalf of Harris Teeter, Inc. (the "Intervenor"), attached please find an original and twenty copies of the Intervenor's Supplemental Motion to Dismiss the Appeal and Opposition to Postponement of Public Hearing. If you have any further questions, please do not hesitate to have the Office of Zoning staff contact me. Thank you for your attention to this matter.

Sincerely,

HOLLAND & KNIGHT LLP



Norman M. Glasgow, Jr.

Enclosure.

cc: L. Napoleon Cooper  
Advisory Neighborhood Commission 1C  
Melinda Bolling, Assistant Attorney General

BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO. 17830

EXHIBIT NO. 18

Board of Zoning Adjustment  
District of Columbia  
CASE NO. 17830  
EXHIBIT NO. 18

**BEFORE THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**APPEAL OF:**

**L. Napoleon Cooper, et al.**

**) BZA Appeal No. 17830**

**)  
)  
From a decision of the Zoning Administrator to  
)  
issue a building permit and certificate of  
)  
occupancy for a grocery store, allegedly in  
)  
violation of the Reed-Cooke Overlay District,  
)  
at premises 1631 Kalorama Road, N.W.  
)  
(Square 2672, Lot 36)  
)**

**SUPPLEMENTAL MOTION TO DISMISS THE APPEAL  
AND OPPOSITION TO POSTPONEMENT OF PUBLIC HEARING**

**I.  
INTRODUCTION**

In any appeal before the Board of Zoning Adjustment, the appellant carries the burden of proof and is therefore under an affirmative obligation to diligently prosecute its case. When an appellant has failed to meet this basic obligation, dismissal of the appeal is the appropriate remedy. The present appeal was filed nearly six months ago, and the Appellants were officially notified of the public hearing date on August 19, 2008, approximately three months ago. Although the ostensible justification for the requested postponement was known to the Appellants at the time the public hearing on the appeal was first scheduled, the request was filed less than one week before the scheduled hearing date. Because the requested postponement is not supported by any compelling justification and would result in significant prejudice to the other parties in the case, Harris Teeter, Inc. (the "Intervenor") respectfully requests that the Board dismiss the present appeal with prejudice on the basis that the Appellants have failed to diligently prosecute their case. In the alternative, the Intervenor requests that the Board deny the requested postponement of the public hearing and proceed with the case as scheduled.

BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO. 17830

EXHIBIT NO. 18

## **II. FACTS**

The chronology of events following the commencement of the present BZA appeal is as follows:

**May 22, 2008:** L. Napoleon Cooper and Yeheyis Getachew (collectively, the "Appellants") file the present appeal with the Board.<sup>1</sup> The appeal alleges that the building permit and certificate of occupancy for the Harris Teeter grocery store located at 1631 Kalorama Road, N.W. (the "Grocery Store") were issued in error and are therefore invalid.

**June 20, 2008:** Appellant Cooper files suit against the Intervenor and a number of other private and public parties in the Superior Court of the District of Columbia. Appellant Cooper's complaint alleges that the Intervenor was engaged in a criminal conspiracy with the other named defendants for the purpose of obtaining a liquor license to allow the sale of beer and wine at the Grocery Store. In his complaint, Appellant Cooper requests compensatory and punitive damages, as well as an injunction enjoining the sale of beer and wine at the Grocery Store. Appellant Cooper also files an application for a temporary restraining order and a motion for a preliminary injunction.

**July 8, 2008:** The D.C. Superior Court denies Appellant Cooper's application for a temporary restraining order (see order attached hereto as Exhibit A).

**July 14, 2008:** Appellant Cooper files a motion with the D.C. Superior Court to reconsider the denial of his application for a temporary restraining order.

---

<sup>1</sup> All of the relevant facts preceding the commencement of the present appeal are provided in the Intervenor's initial motion to dismiss, which is marked as Exhibit 14 of the record in this case. This motion incorporates all of the facts set forth in that document as if fully set forth herein.

**July 18, 2008:** The D.C. Superior Court denies Appellant Cooper's motion for reconsideration of its order denying his application for a temporary restraining order (see order attached hereto as Exhibit B).

**August 1, 2008:** Appellant Cooper files a motion with the D.C. Superior Court to replace the judge who denied his application for a temporary restraining order, alleging that the order denying the application was secured by means of a fraud upon the court.

**August 11, 2008:** The D.C. Superior Court denies Appellant Cooper's motion to replace the TRO judge, denies Appellant Cooper's motion for a preliminary injunction, and dismisses Appellant Cooper's complaint for lack of jurisdiction (see order attached hereto as Exhibit C).

**August 18, 2008:** Appellant Cooper appeals the dismissal of his complaint by the D.C. Superior Court to the D.C. Court of Appeals.<sup>2</sup>

**August 19, 2008:** The Office of Zoning mails an official notice of the scheduled public hearing on the present BZA appeal to the Appellants.

**September 5, 2008:** The D.C. Court of Appeals issues an order to Appellant Cooper to show cause why his appeal should not be dismissed to the extent that it seeks review of any order other than the denial of his motion for a preliminary injunction (see order attached hereto as Exhibit D).

---

<sup>2</sup> This appeal of the Superior Court's dismissal of Appellant Cooper's complaint should be distinguished from his separate petition for review of the Alcoholic Beverage Control ("ABC") Board's order issuing a Class B liquor license to the Intervenor. Both cases are currently pending in the D.C. Court of Appeals. Those pending cases, in turn, should not be confused with Appellant Cooper's prior petition for review of the ABC Board's order dismissing him from the liquor license application proceedings upon a finding that he had improperly demanded money from the Intervenor in exchange for his agreement to withdraw his protest in violation of D.C. Official Code Section 25-434. The prior petition for review was dismissed by the D.C. Court of Appeals on October 11, 2007. In addition, Appellant Cooper also filed: (1) a petition for a writ of mandamus with the D.C. Court of Appeals to prevent the issuance of the Intervenor's liquor license; (2) a motion for reconsideration of the court's denial of the petition for a writ of mandamus; and (3) a petition with the United States Supreme Court for a stay of the proceedings before the ABC Board. Both of those petitions and the motion were summarily denied (see orders attached hereto as Exhibit E and Exhibit F, and letter attached hereto as Exhibit G).

**September 8, 2008:** Appellant Cooper files a response to the show-cause order, conceding that the order dismissing his suit in D.C. Superior Court may not properly be appealed to the D.C. Court of Appeals (see response attached hereto as Exhibit H).

**November 12, 2008:** Less than one week before the public hearing in the present BZA appeal, the Appellants file a motion with the Board to postpone the hearing a minimum of 120 days.

### **III. ARGUMENT**

#### **A. The Board Should Dismiss the Present Appeal Based on the Appellant's Failure to Prosecute the Appeal**

The Board has held that an appellant's failure to diligently prosecute its appeal is a sufficient basis for dismissal. *See, e.g., BZA Application No. 17585 of Darshan Shah* (January 24, 2008). The Appellants have conceded that they cannot produce any evidence to support the allegations contained in their appeal and have essentially asked the Board to suspend the proceedings in this case pending the discovery of evidence that does not exist during a trial that will never occur. Because the Appellants are either unwilling or unable to carry their burden of proof in this case, the Board should dismiss the present appeal with prejudice.

In their postponement request, the Appellants claim that they cannot prove the necessary elements of their BZA appeal without the ability to compel witness testimony and subpoena documentary evidence from the District and the Intervenor.<sup>3</sup> Because the Board does not have the authority to compel testimony or issue subpoenas, the Appellants argue that the proceedings in the present BZA appeal should not be allowed to proceed until Appellant Cooper is afforded an opportunity to prove the necessary elements of *this appeal* in the context of a jury trial in the

---

<sup>3</sup> The Appellant was aware of the Board's inability to compel witness testimony and issue subpoenas at the time the present appeal was filed. *See* Public Hearing Transcript, BZA Appeal No. 17677 (January 29, 2009), at 279 (Chair Miller informing Appellant Cooper that the Board has no authority to issue subpoenas).

Superior Court of the District of Columbia. However, the suit in D.C. Superior Court has already been dismissed, and Appellant Cooper has conceded in court filings that the order dismissing the suit may not be appealed to the D.C. Court of Appeals. When viewed in context, it becomes clear that the Appellants' dilatory request for a postponement is nothing more than an abuse of the administrative process designed to keep the Intervenor tied up in protracted litigation and administrative proceedings.

The Board has dismissed appeals based on far less egregious conduct in the past. In *BZA Application No. 13572 of Bradford Brothers Construction Corp.* (October 24, 1981), for example, the Board dismissed an application for variance relief rather than granting the applicant's request for a continuance based on a conflict with a religious holiday. In dismissing the application for failure to prosecute, the Board noted that the applicant had received notice of the public hearing one month in advance and was aware of the religious holiday long before that date. The Board observed that the requested postponement would "seriously inconvenience the opposition and disrupt the orderly consideration of applications by the Board." *Id.* at 2. While the applicant in *Bradford Brothers* received notice of the public hearing one month in advance of the hearing date, the Applicants in the present appeal were mailed such notice on August 19, 2008, nearly three months before the date of the scheduled public hearing.

In *BZA Application No. 13618 of Eric Rudd* (January 18, 1982), an applicant for variance relief was provided notice of the public hearing on his application approximately one month before the hearing date. Approximately three weeks before the public hearing, the applicant requested a continuance of the hearing based on an out-of-town scheduling conflict. An agent of the applicant appeared at the public hearing and requested a postponement of the hearing to a later date. Because the requested postponement was based solely on the applicant's convenience,

the Board dismissed the application for failure to prosecute. While the applicant in *Rudd* requested a continuance less than two weeks after receiving notice of the public hearing, the Appellants in the present case waited nearly three months before making such a request.

Finally, in *BZA Application No. 13995 of Gary Schuman* (August 15, 1983), the Board dismissed an application for variance relief after the applicant requested a postponement of the public hearing because he was scheduled to teach an out-of-town seminar on the day of the hearing. The applicant filed the postponement request approximately one week before the public hearing, and an agent of the applicant appeared at the hearing to reiterate the request. The Board dismissed the application for lack of diligent prosecution. The Board noted that the applicant was aware of the conflict well in advance of the public hearing and concluded that "a rescheduling of the seminar or the designation of a representative prepared to present evidence in support of the requested variance would have been a more prudent action on the part of the applicant than the request for continuance." *Id.* at 1.

In each of the cases discussed above, the Board concluded that dismissal—rather than the mere denial of the requested continuance—was the appropriate remedy. Given the complete absence of evidence supporting the appeal and the lack of good faith on the part of the Appellants, the Board should dismiss the present appeal with prejudice.

**B. The Appellant's Request for a Postponement of the Public Hearing on the Appeal Should Be Denied**

Even if the Board does not agree that dismissal is the most appropriate remedy in this case, the Appellant's last-minute request for a postponement of the scheduled public hearing should nonetheless be denied. In determining whether to grant a request for a continuance, the Board must consider "the reasons for the request for continuance, the prejudice that would result from its denial, the parties' diligence in seeking relief, any lack of good faith, and any prejudice

to the opposing party." *King v. D.C. Water and Sewer Authority*, 803 A.2d 966, 968 (D.C. 2002)(punctuation omitted)(quoting *Murphy v. Beiro Construction Co.*, 679 A.2d 1039, 1043 (D.C. 1996)). Based on these criteria, the Board should deny the Appellant's request for a postponement.

1. Reasons for the Continuance

There is simply no legitimate basis for the requested continuance. Appellant Cooper's suit in D.C. Superior Court was dismissed more than three months ago, and he has admitted that the dismissal of the suit is not subject to appeal in the D.C. Court of Appeals. The Board should not postpone the public hearing on the present appeal pending the outcome of a trial that will never take place. If the Appellants have been unable to produce any evidence supporting their allegations in the six months since the present appeal was first filed, there is simply no reason to believe that such evidence will emerge in the future.

2. Prejudice Resulting from the Denial of the Requested Continuance

The denial of the request to postpone the public hearing on the present appeal will result in no prejudice to the Appellants. As noted above, the Appellants filed the present appeal with no evidence to support their claims, they have taken no steps to obtain such evidence in the six months since the appeal was first filed, and it is now clear that the evidence needed to support their appeal will not be forthcoming in the future. While it is clear that the denial of the requested continuance will not prejudice the Appellants in any way, any postponement of the public hearing in this case will result in significant inconvenience to the opposing parties and will disrupt the efficient administration of the Board's caseload.

3. Diligence in Seeking Relief

The Appellants have not been diligent in seeking to postpone the public hearing on this appeal. Although the Appellants have known for months that they would be unable to prove any of the elements of their appeal, they waited until less than one week before the public hearing to request a continuance. The D.C. Court of Appeals has noted that "[t]here is no doubt that continuances can upset an agency's attempts to control its workload and to dispose of the cases before it expeditiously, and that last-minute requests for a continuance are generally viewed with disfavor." *King*, 803 A.2d at 969 (punctuation and internal citations omitted). In light of the fact that the Appellants have been aware of the purported justification for their postponement request for many months, their decision to file the request less than one week before the scheduled public hearing date weighs heavily against granting the request.

4. Lack of Good Faith

In filing a frivolous appeal with the Board without any supporting evidence and in failing to adequately prepare their case before the scheduled public hearing date, the Appellants have abused the administrative process and have demonstrated an utter lack of good faith. The Board should not countenance the Appellants' attempts to further delay these proceedings.

5. Prejudice to Opposing Parties

If granted, the requested postponement of the public hearing will result in significant prejudice to the other opposing parties. All parties to this case have been aware of the public hearing date for nearly three months and have scheduled their other obligations accordingly. In addition, the Intervenor's out-of-state representative has already incurred significant costs in making travel arrangements for the purpose of attending the public hearing on the scheduled date. Intervenor has taken Appellants' unfounded allegations and meritless claims seriously, has

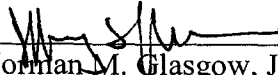
engaged counsel, has utilized the time of corporate counsel and company officials, and is providing an out-of-town corporate representative for this hearing. To postpone this hearing for the reasons set forth by the Appellants would clearly be prejudicial to the Intervenor. While the denial of this continuance request would result in no prejudice to the Appellants, the requested postponement would result in substantial costs to the opposing parties in this case.

### **III. CONCLUSION**

Based on all of the reasons set forth herein, the Board should dismiss the present appeal based on the Appellant's failure to prosecute or, in the alternative, deny the Appellant's motion to postpone the public hearing on the appeal and require the Appellants to move forward with their case.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:   
Norman M. Glasgow, Jr.  
Jeffrey T. Johnson  
2099 Pennsylvania Ave., N.W.  
Suite 100  
Washington, D.C. 20006  
(202) 955-3000

November 14, 2008

## **CERTIFICATE OF SERVICE**

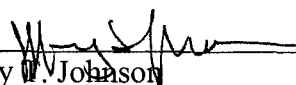
**I HEREBY CERTIFY** that a copy of the foregoing Motion to Dismiss was served this

14th day of November 2008, via hand-delivery upon the following:

L. Napoleon Cooper  
2400 16<sup>th</sup> Street, N.W.  
No. 545  
Washington, DC 20009

Advisory Neighborhood Commission 1C  
Attn: Bryan Weaver, ANC 1C Chairperson  
1812 Calvert Street, NW - #D  
Washington, DC 20009

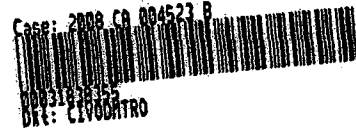
Melinda Bolling  
Doris Parker-Woolridge  
Assistant Attorneys General  
Office of the General Council  
Department of Consumer and Regulatory  
Affairs  
941 North Capitol Street, N.E.  
Washington, DC 20002

  
\_\_\_\_\_  
Jeffrey W. Johnson

# 5802698\_v1

A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION  
Washington, D.C. 20001



L. Napoleon Cooper  
Plaintiff

vs.

Civil Action No. 08CA4523

Douglas Semal, et al.  
Defendant

**FILED AND DOCKETED**

JUL 10 2008

**THE OFFICE OF  
JUDGE-IN-CHAMBERS**

**ORDER**

Upon consideration of the motion for a temporary restraining order

filed by L. Napoleon Cooper

and after hearing argument on behalf of all parties concerned, it is, by the Court, this 8<sup>th</sup>

day of July, 20 08,

**ORDERED:**

(1) That the motion be, and it is hereby, ☐ GRANTED ☒ DENIED

(2) That a status hearing on the motion for a preliminary injunction

Will be held on July 18, 2008 at 11:30 a.m. before Judge Vincent.

Copies to:

John M. Gden  
JUDGE

**B**

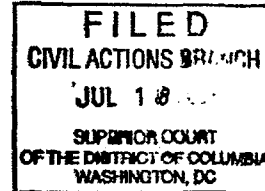
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

L. Napoleon Cooper

v.

Douglas Jemal  
d/b/a Jemal's Citadel LLP, *et al*  
Defendants

Civil No.: 2008 CA 4523 B



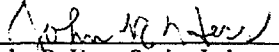
ORDER DENYING MOTION FOR RECONSIDERATION

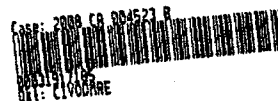
This matter is before the Court on the motion of petitioner for reconsideration of the order denying his request for a temporary restraining order.

The matters of which the petitioner complains were, or should have been, presented at the hearings before the two administrative agencies, the orders of which are presently pending review before the D. C. Court of Appeals. Consequently, this Court was, and still is, of the opinion that it is without jurisdiction to grant the relief requested.

Furthermore, even if this Court had jurisdiction, the petitioner has failed to show that he would be irreparably harmed by the sale of alcoholic beverages from the premises in question pending a decision on his motion for a preliminary injunction. Accordingly, it is this 18<sup>th</sup> day of July, 2008,

ORDERED, that the motion for reconsideration be, and the same is, hereby DENIED.

  
John R. Hess, Senior Judge



Copies to:

Ellen A. Efros  
Deputy Attorney General  
Civil Litigation Division  
441 4<sup>th</sup> St., N.W., 6<sup>th</sup> Floor  
Washington, DC 20001

Paul J. Kiernan,  
Norman M. Glasgow, Jr.  
Holland & Knight, LLP  
2099 Pennsylvania Avenue, N.W., Suite 100  
Washington, DC 20006

Fred P. Moosally, III  
General Counsel, ABRA  
941 North Capital St., N.E., Suite 7200  
Washington, DC 20002

James L. Marketos  
Berliner, Corcoran & Rowe, LLP  
1101 Seventeenth St., N.W.  
Suite 1100  
Washington, DC 20036-4798

Lane H. Potkin  
702 H Street, N.W., 4<sup>th</sup> Floor  
Washington, DC 20001

Anton M. Weiss  
Paul L. Pascal  
Pascal & Weiss P.C.  
2008 Pennsylvania Ave., N.E.  
Washington, DC 20003

**C**

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**L. Napoleon Cooper,**

**Plaintiff,**

**v.**

**Douglas Jemal,**

**d/b/a Jemal's Citadel LLP, et al.,**

**Defendants.**

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

**Docket No. 2008 CA 4523 B  
Judge Odessa F. Vincent**

**ORDER**

Pending before the Court are:

- 1) the plaintiff's Motion for Preliminary Injunction, filed June 20, 2008;
- 2) the plaintiff's Request that Subpoenas Duces Tecum Issue to Order Defendant Testimony and Compel the Production of Evidence for the July 01, 2008 Hearing on Plaintiff's Application for a Temporary Restraining Order, filed June 25, 2008;
- 3) Defendant Gallagher's Motion to Dismiss, filed June 26, 2008;
- 4) Defendant Allison's Motion to Dismiss, filed June 26, 2008;
- 5) the Plaintiff's Motion for Joinder of a Party, filed July 3, 2008;
- 6) Defendants' Douglas Jemal and Faison Associates Motion to Dismiss, filed July 10, 2008;
- 7) Defendant Harris Teeter's Motion to Dismiss Complaint, filed July 14, 2008;
- 8) Motion of Defendants Gorove/Slade Associates, Inc. and Daniel B. VanPelt to Dismiss the Complaint, filed July 14, 2008;
- 9) Defendant District of Columbia's Motion to Dismiss, filed July 15, 2008;

10) Plaintiff's Motion for Leave to Amend his Motion for a Preliminary Injunction and for Consolidating the Hearing Thereon with a Trial on the Merits, filed July 17, 2008;

11) Plaintiff's Rule 60(b)(3)-(6) Motion for This court to Relieve; or to Entertain an Independent Action to Relieve; Plaintiff of TRO Judge July 8-18, 2008 Orders that Defendants Secured Via Fraud upon the Court, filed August 1, 2008; and the respective oppositions thereto.

Because this Court does not have jurisdiction over the instant matter, *see* D.C. Code § 2-510 ("Any person suffering a legal wrong, or adversely affected or aggrieved, by an order or decision of the Mayor or an agency in a contested case, is entitled to a judicial review thereof in accordance with this subchapter upon filing in the District of Columbia Court of Appeals a written petition for review"), the Court is compelled to deny the plaintiff's requests for relief and grant the defendants' motions to dismiss.<sup>1</sup>

**WHEREFORE**, upon consideration of the instant motions, the oppositions thereto, and the record herein, it is this 11<sup>th</sup> day of August 2008, hereby

**ORDERED** the plaintiff's Motion for Preliminary Injunction, Request that Subpoenas Duces Tecum Issue to Order Defendant Testimony and Compel the Production of Evidence for the July 01, 2008 Hearing on Plaintiff's Application for a Temporary Restraining Order, Plaintiff's Motion for Joinder of a Party Plaintiff's Motion for Leave to Amend his Motion for a Preliminary Injunction and for Consolidating the Hearing Thereon with a Trial on the Merits, Plaintiff's Rule 60(b)(3)-(6) Motion for This Court to Relieve; or to Entertain an Independent Action to Relieve; Plaintiff of TRO Judge July 8-18, 2008 Orders that Defendants Secured Via Fraud upon the Court, and Plaintiff's Motion for Leave to Amend his Motion for a Preliminary

---

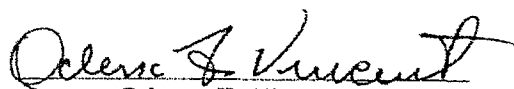
<sup>1</sup> The Court has not considered the substantive arguments of the defendants' motions to dismiss.

Injunction and for Consolidating the Hearing Thereon with a Trial on the Merits be and hereby are **DENIED**. It is further

**ORDERED** that Defendant Gallagher's Motion to Dismiss, Defendant Allison's Motion to Dismiss, Defendants' Douglas Jemal and Faison Associates Motion to Dismiss, Defendant Harris Teeter's Motion to Dismiss Complaint, Motion of Defendants Gorove/Slade Associates, Inc. and Daniel B. VanPelt to Dismiss the Complaint, and Defendant District of Columbia's Motion to Dismiss be and hereby are **GRANTED**. It is further

**ORDERED** that the Complaint for Declaratory and Injunctive Relief be and hereby is **DISMISSED**.

**SO ORDERED.**

  
Odessa F. Vincent  
Associate Judge  
*Signed in Chambers*

Copies via electronic service to:

Ellen A. Efros, Esquire  
Assistant Attorney General  
Office of the Attorney General  
for the District of Columbia

Jayne B. Kantor  
Assistant Attorney General  
Office of the Attorney General  
for the District of Columbia

Paul J. Kiernan, Esquire  
Norman M. Glasgow, Jr., Esquire  
Roxan A. Kerr, Esquire  
Counsel for Defendant Harris Teeter, Inc.

Paul L. Pascal, Esquire  
Co-Counsel for Defendant Harris Teeter, Inc.

James L. Marketos, Esquire  
Counsel for Defendant Gorove/Slade  
Associates, Inc.

Lane H. Potkin, Esquire  
Counsel for Defendants Douglas Jemal and  
Faison Development, Inc.

Anton M. Weiss  
Co-Counsel for Defendant Harris Teeter, Inc.

Copies via U.S. Mail to:

Darrell H. Allison  
1658 Kalorama Road, NW  
Washington, DC 20009  
Defendant

Charles Burger  
605 Pennsylvania Avenue, SE  
Washington, DC 20003  
Defendant

L. Napoleon Cooper  
1400 16<sup>th</sup> Street, NW  
Unit 45  
Washington, DC 20009  
Plaintiff

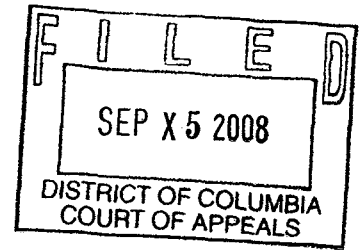
William Crews  
637 Constitution Avenue, NE  
Washington, DC 20002  
Defendant

Maureen Gallagher  
1656 Kalorama Road, NW  
Washington, DC 20009  
Defendant

Fred P. Moosally, III  
941 North Capitol Street, NE, Suite 7200  
Washington, DC 20002  
Counsel for the Alcohol Beverage Regulation  
Authority for the District of Columbia

**D**

**District of Columbia  
Court of Appeals**



No. 08-CV-1052

L. NAPOLEON COOPER,

Appellant,

2008 CAB 4523

v.

DOUGLAS JEMAL, *et al.*,

Appellees.

**ORDER**

On consideration of appellant's motion to expedite, the notice of consent, and the *pro se* notice of appeal filed on August 18, 2008, which seeks review of multiple non-appealable orders, and it appearing that the only order properly before this court is the order entered on August 11, 2008, which denied the motion for preliminary injunction, it is

ORDERED that appellant shall within 20 days from the date of this order, show cause why this appeal should not be dismissed to the extent that it seeks review of any order other than the denial of the preliminary injunction entered on August 11, 2008. *See* D.C. Code § 11-721 (2001). It is

FURTHER ORDERED that appellant's motion to expedite is hereby held in abeyance pending further order of this court.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Eric T. Washington", with a long horizontal line extending to the right.

ERIC T. WASHINGTON  
Chief Judge

Copies to:

Honorable Vincent F. Odessa

L. Napoleon Cooper  
2400 16th Street, NW - Unit 545  
Washington, DC 20009

Todd Kim, Esquire  
Solicitor General - D.C.

**No. 08-CV-1052**

Copies to:

Lane H. Potkin, Esquire  
702 H Street, NW - Suite 400  
Washington, DC 20001

Paul J. Kiernan, Esquire  
Holland & Knight  
2099 Pennsylvania Ave., NW  
Washington, DC 20006

James L. Marketos, Esquire  
1101 17th Street, NW - Suite 1100  
Washington, DC 20036

Darrell H. Allison  
1658 Kalorama Road, NW  
Washington, DC 20009

Charles Burger  
605 Pennsylvania Ave., SE  
Washington, DC 20003

William Crews  
637 Constitution Ave., NE  
Washington, DC 20002

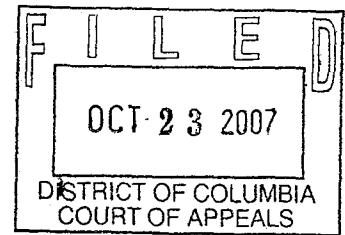
Maureen Gallagher  
1656 Kalorama Road, NW  
Washington, DC 20009

Fred P. Moosally, III, Esquire  
941 North Capitol Street, NE - Suite 7200  
Washington, DC 20002

lw

**E**

**District of Columbia  
Court of Appeals**



No. 07-OA-46

L. NAPOLEON COOPER,

Petitioner,

v.

6103405/062P

DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE CONTROL BOARD, *et al.*,  
Respondents.

BEFORE: Kramer and Fisher, Associate Judges, and Nebeker, Senior Judge.

**ORDER**

On consideration of the petition for writ of mandamus, amended petition for writ of mandamus, appendix, and motion for emergency consideration of the amended petition for writ of mandamus, it is

ORDERED that the petition and amended petition for writ of mandamus are denied.  
It is

FURTHER ORDERED that the motion for emergency consideration of the amended petition for writ of mandamus is denied as moot.

**PER CURIAM**

Copies to:

Todd S. Kim, Esquire  
Solicitor General - D.C.

Napoleon Cooper  
2400 16<sup>th</sup> Street, NW, #545  
Washington, DC 20009

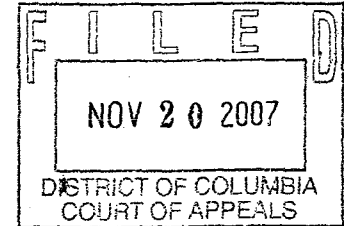
Fred P. Moosally, Esquire  
941 North Capital Street, NE - Suite 7200  
Washington, DC 20002

Paul L. Pascal, Esquire  
1008 Pennsylvania Ave., SE  
Washington, DC 20003

lw

**F**

**District of Columbia  
Court of Appeals**



No. 07-OA-46

L. NAPOLEON COOPER,

Petitioner,

v.

6103405/062P

DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD, *et al.*,

Respondents.

BEFORE: Kramer and Fisher, Associate Judges, and Nebeker, Senior Judge.

**ORDER**

On further consideration of this court's October 23, 2007, order denying petitioner's petition and amended petition for writ of mandamus and denying as moot a motion for emergency consideration of the amended petition for writ of mandamus, and petitioner's motion for reconsideration, it is

ORDERED that petitioner's motion for reconsideration is denied.

**PER CURIAM**

Copies to:

L. Napoleon Cooper  
2400 16<sup>th</sup> Street, NW, Unit 545  
Washington, DC 20009

Fred P. Moosally, Esquire  
941 North Capital Street, NE - Suite 7200  
Washington, DC 20002

Paul L. Pascal, Esquire  
1008 Pennsylvania Ave., SE  
Washington, DC 20003

Todd S. Kim, Esquire  
Solicitor General - D.C.

lw

**G**

Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

William K. Suter  
Clerk of the Court  
(202) 179-3011

November 6, 2007

Mr. L. Napoleon Cooper  
2400 16th Street, NW  
Unit 545  
Washington, DC 20009

Re: L. Napoleon Cooper  
v. District of Columbia Alcoholic Beverage Control Board  
Application No. 07A374

Dear Mr. Cooper:

The application for a stay pending appeal in the District of Columbia Court of Appeals in the above-entitled case has been presented to The Chief Justice, who on November 6, 2007 denied the application.

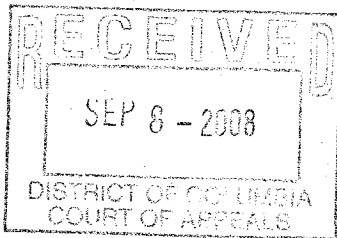
Sincerely,

William K. Suter, Clerk

by

Danny Bickell  
Staff Attorney

H



**DISTRICT OF COLUMBIA  
COURT OF APPEALS**

L. NAPOLEON COOPER

Appellant,

v.

DOUGLAS JEMAL;  
FAISON DEVELOPMENT;  
HARRIS TEETER, INC.;  
RUDDICK CORPORATION;  
GOROVE/SLADE ASSOCIATES  
HON. RUTHANNE G. MILLER (BZA Chr))  
WILLIAM CREWS (Zoning Administrator))  
CHARLES BURGER (ABC Board Chair) )  
DARRELL H. ALLISON; and )  
MAUREEN GALLAGHER;

Appellees

**No. 08-CV-1052**

District of Columbia Superior Court  
Case No. Civil Action-**08-4523**

Trial Judge: Odessa F. Vincent

TRO Judge (In-Chambers): John R. Hess

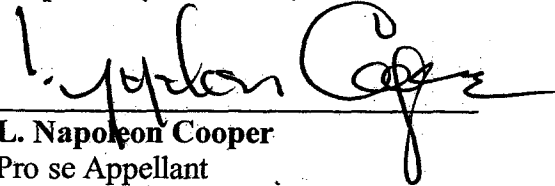
**APPELLANT'S REPLY TO THE COURT'S SHOW CAUSE ORDER  
OF SEPTEMBER 5, 2008 IN THE ABOVE CAPTIONED APPEAL**

Pursuant to the September 5, 2008 Order of this Court "that appellant ... show cause why this appeal should not be dismissed to the extent that it seeks review of any order other than the denial of the preliminary injunction entered on August 11, 2008" and, "it appearing that the only order properly before this court is the order entered ... which denied the motion for preliminary injunction ..." (See attached), Appellant, Pro se Plaintiff/Appellant L. Napoleon Cooper, in the appeal of the above captioned case from the Superior Court of the District of Columbia, respectfully *concur*s with the Court that

the only order properly before this Court on appeal, in the above captioned case, *is* the Superior Court order which denied Plaintiff/Appellant's June 20, 2008, Motion For A Preliminary Injunction."

**WHEREFORE**, Appellant respectfully requests that the Court take notice of Appellant's *concurrence* with the Court's view that the only order properly before *this* Court on appeal from the Superior Court of the District of Columbia is the Order, entered on August 11, 2008, denying Plaintiff/Appellant's preliminary injunction. (See attached.)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. Napoleon Cooper", written over a horizontal line.

**L. Napoleon Cooper**  
Pro se Appellant  
2400 16<sup>th</sup> Street, N.W.  
UNIT 545  
Washington, DC 20009  
202-489-9799  
[managingpartner@project76.org](mailto:managingpartner@project76.org)

**Attachments:**

1. September 5, 2008 D.C. Court of Appeals Show Cause Order; and
2. August 11, 2008 D.C. Superior Court Order Denying Appellant's Motion for a Preliminary Injunction.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Appellant MOTION FOR THE COURT TO TAKE NOTICE OF CONSENT AMONG THE PARTIES TO TREAT APPELLANTS 08/26/2008 "MOTION TO EXPEDITE CONSIDERATION OF APPEAL" AS HAVING BEEN FILED EFFECTIVE SEPTEMBER 3, 2008, were served via First Class mail on September 3, 2008, including on the following:

RUDDICK CORPORATION, *Defendant*  
301 S. Tryon Street  
SUITE 1800  
Charlotte, North Carolina 28202  
**(Ruddick Corp. is Parent Company to Harris Teeter, Inc.)**

MAUREEN GALLAGHER, *Defendant*  
a/k/a Kalorama-7  
1656 Kalorama Road, N.W.  
Washington, D.C. 20009

DARRELL H. ALLISON, *Defendant*  
a/k/a Kalorama-7  
1658 Kalorama Road, N.W.  
Washington, D.C. 20009

### **COUNSEL to be served in the above captioned case, include:**

ELLEN A. EFROS [Bar #250746]  
Deputy Attorney General (OAG-CLD)  
441 4<sup>th</sup> Street, N.W., 6<sup>th</sup> Floor  
Washington, D.C. 20001

**DAVID A. HYDEN** [#]  
Office of the Solicitor General  
District of Columbia (OAG)  
Assistant Attorney General  
441 4<sup>th</sup> Street, N.W., 6<sup>th</sup> Floor  
Washington, D.C. 20001  
**Counsel for Defendant the District of Columbia (William "Bill" Crews; Charles Burger and the Honorable Ruthanne G. Miller)**

**PAUL J. KIERNAN**, [#385627]  
Holland & Knight, LLP  
2099 Pennsylvania Avenue, N.W., Suite 100

Washington, D.C. 20006  
**Co-Counsel to Defendant, Harris Teeter, Inc.**

FRED P. MOOSALLY, III  
General Counsel, ABRA  
941 North Capital Street, N.E., Suite 7200  
Washington, D.C. 20002

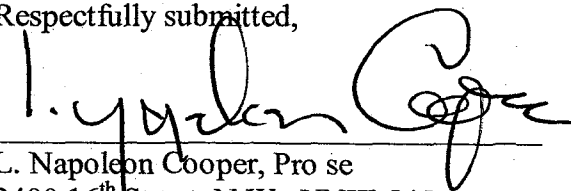
JAMES L. MARKETOS  
Berliner, Corcoran & Rowe, LLP  
1101 Seventeenth Street, N.W.  
SUITE 1100  
Washington, D.C. 20036-4798  
**Counsel to Defendant, VanPelt d/b/a Gorove/Slade Associates, Inc.**

LANE H. POTKIN, [Bar #255190]  
702 H. Street, N.W., 4<sup>th</sup> Floor  
Washington, D.C. 20001  
**Counsel to Defendants Douglas Jemal and Faison Development**

ANTON M. WEISS [#032235]  
**PAUL L. PASCAL [#009753]**  
Pascal & Weiss P.C.  
1008 Pennsylvania Avenue, S.E.  
Washington, D.C. 20003  
**Co-Counsel for Defendant, Harris Teeter, Inc.**

Done this 8<sup>th</sup> Day of September, 2008.

Respectfully submitted,



L. Napoleon Cooper, Pro se  
2400 16<sup>th</sup> Street, N.W., UNIT 545  
Washington, D.C. 20009  
202-489-9799 (Voice)  
202-506-3821 (Fax)  
[managingpartner@project76.org](mailto:managingpartner@project76.org)