

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

<b>In the Matter of:</b>	)	
	)	
Krakatoa, Inc.	)	Case Number: 10-PRO-00160
t/a Chief Ike's Mambo Room	)	License Number: 017940
	)	Order Number: 2011-205
Application to Renew a	)	
Retailer's Class CT License	)	
	)	
at premises	)	
1723-1725 Columbia Road, N.W.	)	
Washington, D.C. 20009	)	
	)	

**BEFORE:** Charles Brodsky, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Krakatoa, Inc., t/a Chief Ike's Mambo Room, Applicant

Andrew Kline, Non-lawyer Representative, on behalf of the Applicant

Nancy Shia, on behalf of A Group of Five or More Individuals, Protestants

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

Krakatoa, Inc., t/a Chief Ike's Mambo Room (Applicant), filed an Application to renew its Retailer's Class CT License (Application) at premises 1723-1725 Columbia Road, N.W., Washington, D.C. A Group of Five or More Individuals (Protestants), represented by Nancy Shia, filed a protest on November 15, 2010. The Application came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 29, 2010, and a Status Hearing on January 12, 2011.

The Applicant and the Protestants were unsuccessful in negotiating a Voluntary Agreement before the Protest Hearing at a mediation session held on January 6, 2011. The Protest Hearing was held on March 23, 2011.

The Protestants submitted Proposed Findings of Fact and Conclusions of Law. The Board includes the Proposed Findings of Fact and Conclusions of Law in this matter's official record.

Pursuant to D.C. Official Code § 25-602(a) (2001), the protest issues are whether the Application adversely impacts the neighborhood's peace, order, and quiet.

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following:

### FINDINGS OF FACT

1. The Applicant submitted an Application to renew its Retailer's Class CT License. *ABRA Licensing File No. 017940.*
2. The Applicant's establishment is located at 1723-1725 Columbia Road, N.W., in a C-2-B zone. *ABRA Protest File No. 10-PRO-00160, Protest Report, 2.* The David's Stars Child Development Center is located within 400 feet of the Applicant. *Protest Report, Exhibit No. 6.* There are no other schools, recreation centers, public libraries, or day care centers within 400 feet of the Applicant. *Protest Report, 4; Protest Report, Exhibit No. 6.* There are 29 ABC-licensed establishments located within 1200 feet of the establishment. *Protest Report, 3.* There are 7 Retailer's Class CT Licenses within 1200 feet of the Applicant. *Protest Report, 4.* The Applicant has no prior ABC violations. *Protest Report, 11.*
3. Alan Jiricowic owns the establishment. *Transcript (Tr.), 3/23/11 at 123-24.* The establishment is named after President Eisenhower and the Mambo, a Cuban dance. *Tr., 3/23/11 at 124-25.* The establishment is colorfully decorated by local artists, because the owner has a background in art and theater. *Tr., 3/23/11 at 125-26.* The establishment has two floors. *Tr., 3/23/11 at 14.* The first floor of the establishment has a stage and the second floor has an area for a DJ. *Tr., 3/23/11 at 14.*
4. Robert Belmonte has worked at the Applicant's establishment since 1996. *Tr., 3/23/11 at 77.* Mr. Belmonte is the establishment's general manager. *Tr., 3/23/11 at 77.* The establishment has one to three security members on staff depending on the scheduled event. *Tr., 3/23/11 at 102.*
5. The establishment provides entertainment regularly. *Tr., 3/23/11 at 80, 126.* Monday is trivia night. *Tr., 3/23/11 at 80.* Local bands usually play on Wednesday. *Tr., 3/23/11 at 80.* On Thursday, the establishment provides a DJ that plays 80s dance music. *Tr., 3/23/11 at 80.* On Friday and Saturday, the establishment usually begins with live entertainment and has a DJ afterwards. *Tr., 3/23/11 at 80-81.* The owner allows the DJ to choose the music that the establishment plays. *Tr., 3/23/11 at 126.*
6. Alcoholic Beverage Regulation Administration (ABRA) Investigator Jabriel Shakoor investigated the protest against the renewal of the Applicant's ABC-license. *Tr., 3/23/11 at 11.* ABRA investigators monitored the establishment on 15 separate occasions

from January 14, 2011, to February 5, 2011. *Tr.*, 3/23/11 at 14-15. ABRA investigators did not observe loitering, criminal activity, or excessive trash. *Tr.*, 3/23/11 at 15. ABRA's records show that there were approximately two to three complaints regarding noise since January 23, 2011. *Tr.*, 3/23/11 at 70. None of the complaints led to an ABC violation. *Tr.*, 3/23/11 at 70.

7. The Metropolitan Police Department (MPD) responded to 24 calls for service at the establishment. *Tr.*, 3/23/11 at 14. MPD responded to 10 calls for disorderly conduct and one call for simple assault. *Tr.*, 3/23/11 at 14. No calls for service led to an ABRA investigation or ABC violations. *Tr.*, 3/23/11 at 14.

8. During the ABRA investigation of the protest, Investigator Shakoor tried to verify that noise from the establishment is audible in the Protestants' residences on several occasions. *Tr.*, 3/23/11 at 15. He observed the noise being generated by the establishment by entering the establishment, listening to the type of music being played, and then determining whether he could correlate the noise he heard outside the establishment with the sounds he had heard inside the establishment. *Tr.*, 3/23/11 at 23.

9. In addition, Investigator Shakoor offered to enter the Protestants' residences on February 4, 2011, and February 5, 2011. *Tr.*, 3/23/11 at 63; *Protestants Exhibit No. 7*. However, Investigator Shakoor "was never able to go inside the residents'" dwellings to listen for sound, because he was not permitted to go inside any of the Beverly Court Cooperative apartments. *Tr.*, 3/23/11 at 19.

10. When Investigator Shakoor stood across the street from the establishment, he "could not hear any music from outside the establishment" when the establishment's DJ performed on the second floor. *Tr.*, 3/23/11 at 15-16. Investigator Shakoor did not hear music coming from the front door, the windows on the left side of the building, or from the second floor. *Tr.*, 3/23/11 at 16.

11. Investigator Shakoor did hear bass music from the first floor coming from one of the establishment's windows. *Tr.*, 3/23/11 at 16. However, in front of the Beverly Court Cooperative, the music "could not be heard over [the] traffic on Columbia Road[, N.W.]" *Tr.*, 3/23/11 at 16. As indicated by Investigator Shakoor, the noise heard in front of the Beverly Court Cooperative is not from the Applicant but "from traffic and vehicles with their sound and speakers turned up." *Tr.*, 3/23/11 at 16. Indeed, Investigator Shakoor heard no noise in front of the establishment on many of the occasions that he conducted monitoring investigations. *Tr.*, 3/23/11 at 16-17, 21.

12. The Applicant has taken steps to soundproof the establishment. The Applicant hired Ken Ribotsky as a noise consultant to measure the noise being generated by the establishment. *Tr.*, 3/23/11 at 132, 301. Specifically, in April and May of 2010, the establishment conducted a sound test outside of Ms. Shia's apartment while the establishment played its music at maximum volumes. *Tr.*, 3/23/11 at 133. The test revealed that the noise coming from the establishment was about 60 decibels. *Tr.*, 3/23/11 at 133. The Applicant then installed double doors in its vestibule, which reduced the noise being measured outside of Ms. Shia's apartment to less than 60 decibels. *Tr.*, 3/23/11 at 133-34; *Applicant Exhibit No. 3-4*.

13. When the establishment is open, all the speakers are turned at least 90 degrees away from the establishment's windows and doors. *Tr.*, 3/23/11 at 14, 255-56. The stereo equipment is 15 feet away from the establishment's front windows and doors. *Tr.*, 3/23/11 at 14, 87.

14. The establishment has installed half-inch plywood and inch-and-a-half soundproofing foam inside the establishment. *Tr.*, 3/23/11 at 18, 87. Also, the Applicant installed a three-pane glass window near the front door, which provides further noise reduction. *Tr.*, 3/23/11 at 18, 90; *Applicant Exhibit No. 2*.

15. Every night, the establishment also has its staff monitor the area outside the premises and across the street to see if noise can be heard. *Tr.*, 3/23/11 at 142. The establishment has also posted a sign regarding noise on its premises. *Tr.*, 3/23/11 at 139.

16. The establishment schedules entertainment in a manner that minimizes noise. The establishment forgoes live entertainment early in the week unless there is holiday, and it does not book live entertainment on Monday or Sunday. *Tr.*, 3/23/11 at 83, 85. Also, the establishment does not book heavy metal or rock groups. *Tr.*, 3/23/11 at 84. The establishment only books three to five-piece bands and tries to book smaller acts to avoid noise. *Tr.*, 3/23/11 at 84. Finally, the establishment shuts down its outdoor patio at least one hour before closing. *Tr.*, 3/23/11 at 102.

17. The Applicant also soundproofed the area near its stage. The establishment built an additional wall behind the stage on the first floor of the establishment. *Tr.*, 3/23/11 at 88. Behind the stage, there is a wall made of one quarter inch soundproofing foam that is covered by a curtain. *Tr.*, 3/23/11 at 95; *Applicant Exhibit No. 5-6*. In addition, behind that wall there is another wall made of half-inch plywood with one-and-a-half-inch soundproofing foam. *Tr.*, 3/23/11 at 97. Behind the stage, the Applicant refitted the window area with double panes of soundproof glass. *Tr.*, 3/23/11 at 99-100, 135. Finally, the establishment also bought a soundproof curtain made of lead. *Tr.*, 3/23/11 at 18, 102, 137.

18. In total, the establishment has spent over \$20,000.00 soundproofing the establishment. *Tr.*, 3/23/11 at 137.

19. The establishment has also conducted a sound check with ABRA's investigators. *Tr.*, 3/23/11 at 117, 159. The establishment's goal was to ensure that sound escaping from the establishment was less than 60 decibels. *Tr.*, 3/23/11 at 115. Based on sound meter readings taken from across the street and in front of the Beverly Court Cooperative, the decibel level of noise coming from the establishment was less than 60 decibels. *Tr.*, 3/23/11 at 116-17. The establishment has never conducted a sound check in the Beverly Court Cooperative. *Tr.*, 3/23/11 at 104.

20. David Inoue is the Administrative Director of Christ House, which provides services to the homeless. *Tr.*, 3/23/11 at 168. Christ House is located in a commercial zone. *Tr.*, 3/23/11 at 173. The nonprofit provides three Alcoholics Anonymous meetings and one Narcotics Anonymous meeting per week. *Tr.*, 3/23/11 at 169.

21. During the summer, some of the residents at Christ House have complained about being able to hear the Applicant's music in their residences. *Tr.*, 3/23/11 at 171. Nevertheless, the residents of Christ House are only disturbed when they have their windows open. *Tr.*, 3/23/11 at 178-79. The noise coming from the Applicant is not heard in the Christ House's residences when the residents' windows are closed. *Tr.*, 3/23/11 at 179. As a result, the residents of Christ House are not disturbed by the Applicant's music in the winter when their windows are usually closed. *Tr.*, 3/23/11 at 179
22. Margaret Snow lives at the Beverly Court Cooperative, which is located at 1736 Columbia Road, N.W. *Tr.*, 3/23/11 at 182. Ms. Snow's apartment is located in a C-2-B zone, which is a commercial zone. *Tr.*, 3/23/11 at 193, *Applicant Exhibit No. 8*.
23. Ms. Snow hears reverberating bass and percussion noise in her apartment. *Tr.*, 3/23/11 at 185. The noise can often be heard between 10:00 p.m. and 3:00 a.m. *Tr.*, 3/23/11 at 189. ABRA investigators previously listened for noise in Ms. Snow's apartment in 2009, but they did not hear any noise. *Tr.*, 3/23/11 at 200.
24. Ellen Jaffe has resided at the Beverly Court Cooperative for approximately 22 years. *Tr.*, 3/23/11 at 205. Ms. Jaffe lives in the apartment above Ms. Snow, which is located in a commercial zone. *Tr.*, 3/23/11 at 205, 212; *Applicant Exhibit No. 8*. Ms. Jaffe hears bass sounds in her apartment, which she believes comes from the establishment's DJs. *Tr.*, 3/23/11 at 205, 217. She often hears noise on Friday and Saturday nights and becomes disturbed by the noise around 11:30 p.m. *Tr.*, 3/23/11 at 205. Ms. Jaffe utilizes a white noise machine and an air purifier to drown out the noise. *Tr.*, 3/23/11 at 206.
25. Randy Hanson lives at the Beverly Court Cooperative. *Tr.*, 3/23/11 at 229. Mr. Hanson usually hears noise in his residence between 11:00 p.m. and 3:00 a.m. on Thursday, Friday, and Saturday. *Tr.*, 3/23/11 at 229. The majority of the sound heard by Mr. Hanson is bass and percussion, which he believes is being generated by the establishment. *Tr.*, 3/23/11 at 236. Mr. Hanson hears patrons screaming in the establishment's front patio as well. *Tr.*, 3/23/11 at 236, 242.
26. Nancy Shia lives at the Beverly Court Cooperative. *Tr.*, 3/23/11 at 251. Ms. Shia hears bass and percussion sounds in her apartment, which she believes comes from the Applicant's establishment. *Tr.*, 3/23/11 at 262.
27. The Applicant's Voluntary Agreement, dated July 13, 2000, states in pertinent part:
- Chief Ike's will take steps to ensure that noise emanating from its establishment, whether from live music, recorded music, or patrons inside or outside the bar, cannot be heard by residents of Beverly Court. *Protestants Exhibit No. 1*.

### CONCLUSIONS OF LAW

28. Pursuant to D.C. Official Code § 25-313(a) (2001) and 23 DCMR § 400.1(a) (2008), an Applicant must demonstrate to the Board's satisfaction that the establishment for which an Application to renew a Retailer's Class CT License is sought is appropriate for the neighborhood in which it is located. The Protestants challenged the Application on

the grounds that it will adversely impact peace, order, and quiet. The Board finds that the Application is appropriate.

29. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (Supp. 2010) and D.C. Official Code § 25-609 (2001), an ANC's properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643 (D.C. 1982). Accordingly, the Board "must elaborate, with precision, its response to the ANC issues and concerns." Foggy Bottom Ass'n, 445 A.2d at 646. Here, no ANC submitted a recommendation at least seven days before the Protest Hearing under § 25-609 and therefore, the great weight requirement is inapplicable in this matter.

30. Although the Protestants experience noise in their homes, the facts and law weigh heavily against denying the Application.

31. First and foremost, the evidence presented to the Board demonstrates that the Applicant is compliant with D.C. Code § 25-725.

32. The ABC laws of the District of Columbia state that "The licensee under an on-premises retailer's license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment" except if the premises are located "within a C-1, C-2, C-3, C-4, C-M, or M zone, as defined in the zoning regulations for the District." D.C. Code § 25-725(a), (b)(3) (2001). In addition, "licensees . . . shall comply with the noise level requirements set forth in Chapter 27 of Title 20 of the District of Columbia Municipal Regulations." § 25-725(c). In commercial zones, the maximum noise level that may be caused by a licensee is 60 dB(A) at night. 20 DCMR § 2701.1 (Supp. 2011).

33. Here, no evidence was presented to the Board that the Protestants or the residents of Christ House are located in a residential zone or that anyone located in a residential zone is being disturbed by the Applicant's operations. In addition, the sound tests conducted by the Applicant indicate that the sound produced by the Applicant is not greater than 60 decibels in the street space near the Beverly Court Cooperative. Supra, at para. 12, para. 19. As such, the noise heard by the Protestants does not violate § 25-725.

34. The Board also notes that the Applicant is not at risk of violating the District of Columbia's new disorderly conduct law, which is an ABC violation under D.C. Code § 25-823(2).

35. The new law states: "It is unlawful for a person to make an unreasonably loud noise between 10:00 p.m. and 7:00 a.m. that is likely to annoy or disturb one or more other persons in their residences." D.C. Code § 22-1321(d) (Supp. 2011). In the Board's view, noise generated by an establishment cannot be "unreasonable" if a licensee has taken commercially reasonable steps to soundproof its establishment and is not otherwise in violation of the District of Columbia's noise laws.

36. There is no evidence that the noise created by the Applicant is unreasonable. The Applicant has made extensive efforts to soundproof the establishment. The facts demonstrate that the Applicant has spent over \$20,000.00 to soundproof its premises and

followed the recommendations of a noise expert. Supra, at para. 18. The Applicant also has modified its operations to avoid creating noise by placing its speakers away from the establishment's windows, having employees check for noise, and limiting the types of entertainment offered during the week. Supra, at para. 12-18. Additionally, as indicated above, the establishment is not generating noise in violation of § 25-725. As a result, the Board finds that the Applicant's operations do not create a risk of disorderly conduct because the Applicant has taken commercially reasonable steps to soundproof its premises and is not producing noise in violation of any of the District of Columbia's noise laws.

37. The Board further notes that the screaming heard by Mr. Hanson in the Applicant's patio can be sufficiently addressed by MPD using the new disorderly conduct law.

38. Finally, the evidence does not demonstrate that the Applicant is in violation of its Voluntary Agreement. According to the July 13, 2000, Voluntary Agreement, the Applicant must "take steps to ensure that noise emanating from its establishment . . . cannot be heard by residents of Beverly Court." Supra, at para. 27.

39. There is insufficient evidence that the noise experienced by the Protestants living in the Beverly Court Cooperative is being caused by the Applicant. Specifically, the Protestants' testimony that they hear noise from the Applicant's establishment is contradicted by Investigator Shakoor's testimony. No satisfactory explanation was provided to the Board as to why the Protestants can hear noise from the Applicant in their apartments, but Investigator Shakoor could not hear any noise from the Applicant's establishment outside the Beverly Court Cooperative. Supra, at para. 6, para. 10-11. In addition, the Board cannot ignore the fact that the Applicant does not have any prior noise violations. Supra, at para. 2. Most likely, as indicated by Investigator Shakoor, the sounds being heard by the Protestants are from the traffic on Columbia Road, N.W. Supra, at para. 11.

40. Consequently, the Board finds that renewing the Applicant's Retailer's Class CT License will not adversely impact the peace, order, and quiet of the neighborhood. The Board notes that this decision does not alter the Voluntary Agreements executed by the Applicant. As a result, the Protestants still have the right to report to ABRA if they observe any violations of the Voluntary Agreement in the future.

## **ORDER**

Therefore, it is hereby **ORDERED**, on this 18th day of May 2011, that the Application to Renew a Retailer's Class CT License filed by Krakatoa, Inc., t/a Chief Ike's Mambo Room, at premises 1723-1725 Columbia Road, N.W., is hereby **GRANTED**.

District of Columbia  
Alcoholic Beverage Control Board

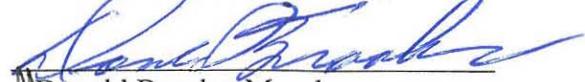
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Charles Brodsky, Chairperson



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Nick Alberti, Acting Chairperson



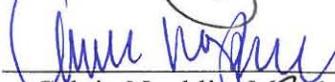
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Donald Brooks, Member



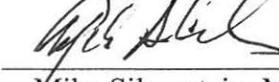
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Herman Jones, Member



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Calvin Nophlin, Member



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Mike Silverstein, Member

Pursuant to 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, pursuant to 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 pursuant to 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).