

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

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| In the Matter of: |) | |
| |) | |
| The Griffin Group, |) | License Number: 76804 |
| t/a Policy |) | Case Number: 10-AUD-0014(a) |
| |) | Order Number: 2012-079 |
| Holder of a Retailer's Class CR License |) | |
| at premises |) | |
| 1902-1906 14 th St., N.W. |) | |
| Washington, D.C. 20009 |) | |
| _____ |) | |

BEFORE: Nick Alberti, Acting Chair
 Donald Brooks, Member
 Herman Jones, Member
 Calvin Nophlin, Member
 Mike Silverstein, Member

ALSO PRESENT: Raj Multani, on behalf of The Griffin Group,
 t/a Policy, Respondent

 Michael Stern, Senior Assistant Attorney General
 Office of the Attorney General, District of Columbia

 Martha Jenkins, General Counsel
 Alcoholic Beverage Regulation Administration

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

On August 5, 2011, the Alcoholic Beverage Regulation Administration (ABRA) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated August 3, 2011, on The Griffen Group, t/a Policy, (Respondent) located at premises 1902-1906 14th Street, N.W., Washington, D.C., charging the Respondent, in Case No. 10-AUD-00014(a) with the following violation, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC license.

Charge I: The Respondent failed to meet food sales requirements of \$2,000 per occupant or 45% gross food sales in violation of District of Columbia Official Code § 25-113(b)(1)(3), for which the Board may take the proposed action under District of Columbia Official Code § 25-823 and 23 DCMR § 800, *et seq.*

The Alcoholic Beverage Control Board (Board) scheduled the Show Cause Status Hearing for September 21, 2011. The matter proceeded to a Show Cause Hearing on December 14, 2011, where the Government and the Respondent presented evidence through the testimony of witnesses and the submission of documentary evidence.

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

FINDINGS OF FACT

1. The Respondent holds a Retailer's Class CR License and is located at 1902-1906 14th Street NW. See *ABRA Licensing File No. 76804*. The Respondent was issued its Retailer's Class CR license on March 19, 2009, and has been in operation since that time. See *ABRA Licensing File No. 76804*. The Respondent's Certificate of Occupancy, dated July 30, 2009, lists 245 seats. See *ABRA Licensing File No. 76804*.
2. The Government called Neal Adejunmobi as its witness. *Transcript, December 14, 2011* (hereinafter "*Tr.*"), at 10. Mr. Adejunmobi is a Compliance Analyst for ABRA. *Tr.* at 11. His duties require him to audit Quarterly Statements submitted by ABC-licensed restaurants and hotels. *Tr.* at 11. Mr. Adejunmobi audited the four Quarterly Statements filed by the Respondent for calendar year 2009. *Tr.* at 11.
3. Mr. Adejunmobi conducts the Quarterly Statements audit by reviewing the four Quarterly Statements submitted by the Respondent for calendar year 2009. *Tr.* at 12. The four Quarterly Statements submitted by the Respondent were January-March 2009, April-June 2009, July-September 2009, October-December 2009. *Tr.* at 12; See *Government Exhibit No. 1*.
4. Mr. Adejunmobi then checks the food sales percentages reported by the Respondent for the calendar year. *Tr.* at 12. He also checks the food sales per occupant for each quarter, and adds the four quarter figures to total the food sales per occupant. *Tr.* at 12. He then divides the total dollar figure by the number of occupants listed on the Respondent's Certificate of Occupancy. *Tr.* at 12. Using this mathematical formula, Mr. Adejunmobi determined that the Respondent had a food sales per occupant dollar figure of \$1,903.00. *Tr.* at 12-13
5. The second test employed by Mr. Adejunmobi is to add the food sales and the alcoholic beverage sales to determine the gross sales for the year. *Tr.* at 13. He determined that the total food sales for the year was 28% of the gross sales. *Tr.* at 13. He relied on the 28% and the \$1,903.00 figures to determine that the Respondent failed to meet the food sales required under the statute. *Tr.* at 13; See *Government Exhibit No. 1*.

6. Mr. Adejunmobi authored the Investigative Report. *Tr.* at 14; *See Government Exhibit No. 1*. The report contains four exhibits representing the Respondent's four Quarterly Statements for calendar year 2009. *Tr.* at 14. The report also contains the Respondent's Certificate of Occupancy. *Tr.* at 14, 17. Mr. Adejunmobi testified that he relies solely on the data provided by the Respondent to conduct his compliance audit. *Tr.* at 17.

7. Mr. Adejunmobi speculated that the Quarterly Statement figures for the first quarter were lower than the other three quarters because the Respondent did not receive his ABC license until March 2009. *Tr.* at 15-16.

8. Mr. Multani, on behalf of the Respondent, explained to the Board that the Quarterly Statement for the first quarter of 2009 contains lower numbers because the establishment didn't open until March 2009. *Tr.* at 24. Mr. Multani stated that the \$97.00 difference between the \$1,903.00 and the statutorily required \$2,000.00 could potentially have been made if the establishment had been open the first two months of first quarter 2009. *Tr.* at 24.

CONCLUSIONS OF LAW

9. The Board has the authority to suspend or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia Official Code pursuant to District of Columbia Official Code § 25-823(1). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Code § 25-830; 23 DCMR § 800, *et seq.*

10. The Board bases its factual findings on the substantial evidence contained in the record. 23 DCMR § 1718.3 (2008). The courts define substantial evidence as evidence that "reasonable minds might accept as adequate to support the [Board's] conclusions." 2641 Corp. v. District of Columbia Alcoholic Beverage Control Bd., 950 A.2d 50, 52 (D.C. 2008) *citing* Kopff v. District of Columbia Alcoholic Beverage Control Bd., 381 A.2d 1372, 1387 (D.C. 1977).

11. We find that the Government has not proven through substantial evidence that the Respondent is guilty of the violation described in Charge I, because the record fails to demonstrate an audit examination of the complete four quarters.

12. As a Class CR Licensee, the Respondent is required under §25-113(b)(1)(3) to meet annual food sales requirements of \$2,000 per occupant or 45% gross food sales. The record shows that the Respondent filed four quarterly statements for 2009. The record also shows that the Respondent was not open until March 2009, so the first quarter statement does not represent a full quarter of food sales. The Board simply cannot hold the Respondent responsible in this instance. The Respondent cannot be expected to make its statutorily required food sales figures if it isn't open for business and selling food.

13. The Board does not fault the Government in this matter. The Government relied on the Compliance Analyst's investigative report which appends the Respondent's four quarterly statements. Equally misleading for the Government and the Board, is that the investigative

report states on page 2 that “the establishment was operating the entire audit period”. The report further states that “the license was not in safekeeping at anytime with ABRA during the audit period”.

14. The Government had no reason to believe that the investigative report contained errors. It relied on the information provided, and brought charges against the Respondent in good faith. These errors triggered an investigative report and a Show Cause Hearing that would not have otherwise been undertaken by the Board but for the clerical oversight. To permit a good faith reliance on data that is inaccurate or incomplete increases the likelihood of unfair treatment against ABC licensees, and undermines the integrity of the Agency’s work. Thus, it is appropriate and necessary that the Board dismiss this matter.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board, on this 29th day of February, 2012, finds that:

1. Charge I as set forth in the Notice to Show Cause, dated August 3,, 2011, alleging that the Respondent failed to meet food sales requirements of \$2,000 per occupant or 45% gross food sales in violation of District of Columbia Official Code § 25-113(b)(1)(3), is hereby **DISMISSED**.

The Alcoholic Beverage Regulation Administration shall deliver copies of this Order to the Respondent and the Government.

District of Columbia
Alcoholic Beverage Control Board



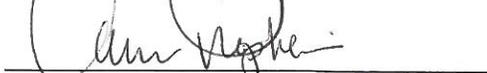
Nick Alberti, Interim Chairperson



Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, N.W., 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, District of Columbia 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 (April 2004) 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).