

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

In the Matter of:	)	
	)	
The Griffin Group,	)	License Number: 76804
t/a Policy	)	Case Number: 10-CMP-00053
	)	Order Number: 2010-376
Holder of a Retailer's Class CR License	)	
at premises	)	
1902-1906 14 <sup>th</sup> St., N.W.	)	
Washington, D.C. 20009	)	

BEFORE:            Nick Alberti, Acting Chair  
                      Mital Gandhi, Member  
                      Donald Brooks, Member  
                      Herman Jones, Member  
                      Calvin Nophlin, Member

ALSO PRESENT:    Kwamina Williford, Esq. 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 April 30, 2010, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated April 10, 2010, on The Griffin Group t/a Policy (Respondent), at premises 1902-1906 14<sup>th</sup> Street, N.W., Washington, D.C., charging the Respondent with the following violation:

Charge I:            The Respondent violated Sections 7 and 14 of its Voluntary Agreement which state that the establishment is responsible for posting signs and encouraging patrons not to disturb the residential

neighborhood, as well as making announcements to the same effect near closing hours (Paragraph 7) and that the establishment will encourage those leaving the establishment to keep conversations and noise down after 10:00 pm (Paragraph 14). This is in violation of D.C. Code § 25-446 (e) (2009), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (1) (2009). The date of this violation is January 27, 2010.

The matter proceeded to a Show Cause Hearing on June 16, 2010. 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 counsel, and the documents comprising the Board's official file, makes the following:

### FINDINGS OF FACT

1. The Board issued a Notice of Status Hearing and Show Cause Hearing dated April 28, 2010 to the Respondent. (*See* Alcoholic Beverage Regulation Administration (ABRA) Show Cause File No. 10-CMP-00053). The Respondent holds a Retailer's Class CR License and is located at 1902-1906 14<sup>th</sup> Street, N.W., Washington, D.C. (*See* ABRA Licensing File No. 76804).
2. The Show Cause Hearing in this matter was held on June 16, 2010. The Notice to Show Cause charged the Respondent with the single violation enumerated above. (*See* ABRA Show Cause File No. 10-CMP-00053).
3. The Government presented its case through the testimony of one witness, ABRA Investigator Felecia Dantzler. *Transcript (Tr.)*, 6/16/10 at 10. The Government also presented Investigative Report No. 10-CMP-00053 (*See* Exhibit 1 and attachments).
4. Investigator Dantzler testified that on January 27, 2010, her supervisor, Craig Stewart, received a call on the ABRA Hot Line regarding a noise complaint at the Respondent's establishment. *Tr.*, 6/16/10 at 12. She arrived at the establishment at 12:53 a.m. and parked behind a Metropolitan Police Department (MPD) patrol car. *Tr.*, 6/16/10 at 12, 23. It was approximately seven minutes prior to closing time. *Tr.*, 6/16/10 at 23, 43. She stood in front of the establishment and could not hear any music emanating from the establishment. *Tr.*, 6/16/10 at 14. She observed about ten people milling outside the restaurant and she heard one woman screaming about three feet from the establishment. *Tr.*, 6/16/10 at 14, 24, 42. Investigator Dantzler did not know if the screaming woman was a patron of the establishment. *Tr.*, 6/16/10 at 50.
5. She and Investigator Stewart entered the establishment at 12:54 a.m. and noticed that the house lights were on, no music was playing and there were approximately ten patrons still inside. *Tr.*, 6/16/10 at 14, 23, 44. The patrons inside the establishment were talking in an orderly manner. *Tr.*, 6/16/10 at 24. Investigator Dantzler then asked to speak

to the ABC licensed manager, Jordan Davidowitz, who directed her to the restaurant's chef to discuss the noise complaint. *Tr.*, 6/16/10 at 15. The chef confirmed that two neighboring residents complained to him about loud music emanating from the establishment. *Tr.*, 6/16/10 at 15-16. The chef determined that there was no loud music. *Tr.*, 6/16/10 at 46.

6. Investigator Dantzler then reviewed the Voluntary Agreement, specifically Paragraph 7 where it states that the Respondent shall strictly maintain noise and vibration levels within its premises so as not to be audible to residents adjacent to the establishment. *Tr.*, 6/16/10 at 17. The Voluntary Agreement also provided that the Respondent will post exterior signs to encourage patrons not to disturb the adjoining residential neighborhood located at T and 14<sup>th</sup> Streets N.W. *Tr.*, 6/16/10 at 18.

7. Investigator Dantzler testified that there was one sign posted on the T Street N.W. side of the building. *Tr.*, 6/16/10 at 18-21, 25, 40. There was no sign located near the main exit door to the establishment nor was there a sign inside the establishment. *Tr.*, 6/16/10 at 18, 30. She testified that the Voluntary Agreement states that the Respondent will post signs, not a sign. *Tr.*, 6/16/10 at 20. Investigator Dantzler conceded that the residential neighborhood abuts T Street N.W. *Tr.*, 6/16/10 at 29-30, 38, 55. She did not know if there were any residences on 14<sup>th</sup> Street N.W. *Tr.*, 6/16/10 at 29.

8. Investigator Dantzler testified that she was at the establishment at closing hour and did not hear the Respondent make any announcement asking patrons to keep the noise down as they exit the establishment. *Tr.*, 6/16/10 at 21, 24. She raised this issue with Mr. Davidowitz and he stated that it was not the Respondent's responsibility to encourage patrons to keep the noise level down. *Tr.*, 6/16/10 at 21-22, 31. She did not hear any other employees asking patrons to keep the noise down as they exited, but she admitted that she didn't know what the employees were telling the patrons as they were leaving. *Tr.*, 6/16/10 at 22, 51. She conceded that the Respondent could have made an announcement prior to her arrival at the establishment seven minutes before closing. *Tr.*, 6/16/10 at 36, 52.

9. Investigator Dantzler spoke to the MPD officers who were assigned to that area but who were not there in a Reimbursable Detail capacity. *Tr.*, 6/16/10 at 32, 34, 41-42. She testified that it is her reading of the Voluntary Agreement that the responsibility of keeping the noise levels low belong to the establishment and not MPD. *Tr.*, 6/16/10 at 32, 49.

10. The Government rested its case at which time the Respondent moved to dismiss Charge I. *Tr.*, 6/16/10 at 59. The Respondent argued that the Government's evidence, chiefly the testimony of Investigator Dantzler did not support the Charge. *Tr.*, 6/16/10 at 61. Additionally, the terms of the Voluntary Agreement such as "encourage" and "considerate" are vague and ambiguous and can vary substantially in their meaning. *Tr.*, 6/16/10 at 61. The Board took the Motion to Dismiss under advisement and the Respondent presented its case through the owner and managing partner, Omar Miskinyar. *Tr.*, 6/16/10 at 62.

11. Mr. Miskinyar testified that the Respondent does indeed hire MPD Reimbursable Detail for security purposes on Tuesday nights. *Tr.*, 6/16/10 at 64, 71-72. One of the reasons the Respondent hired MPD is to assist with the noise and to keep people who are outside the establishment orderly. *Tr.*, 6/16/10 at 73-74, 83, 95. Mr. Miskinyar stated that the Respondent's clientele are not the kind of people who are loud or yell and scream. *Tr.*, 6/16/10 at 73-74. The music is shut off one-half hour prior to closing time which is also last call. *Tr.*, 6/16/10 at 86.

12. Mr. Miskinyar is also familiar with the terms and conditions of the Voluntary Agreement and reviewed those terms with ABRA Investigator Erin Mathieson during the week the Respondent opened for business. *Tr.*, 6/16/10 at 64-65, 76, 80. Investigator Mathieson had a checklist of suggestions for the Respondent to ensure compliance with the Voluntary Agreement. *Tr.*, 6/16/10 at 65. It was Investigator Mathieson who recommended that the Respondent place the sign on T Street N.W. because of the residential nature of that street. *Tr.*, 6/16/10 at 65, 75-76, 80. Mr. Miskinyar stated that the main entrance is on 14<sup>th</sup> Street N.W. and that there are no residences there. *Tr.*, 6/16/10 at 65, 76.

13. Subsequent to Investigator Dantzler's inspection on January 27, 2010, the Respondent has placed additional signs on the front of the establishment near the entrance and in the windows. *Tr.*, 6/16/10 at 66, 94. Mr. Miskinyar also testified that the establishment has stationed a host at the front door to speak to guests and they have security inside the restaurant. *Tr.*, 6/16/10 at 66-67. He stated that the establishment is very good about following through on complaints and addressing residents' concerns quickly. *Tr.*, 6/16/10 at 77. Mr. Miskinyar cares what the neighbors think and he makes the effort to train his staff every day to be considerate of the neighbors. *Tr.*, 6/16/10 at 82, 84, 96.

## CONCLUSIONS OF LAW

14. The Board has the authority to suspend or revoke the license of a licensee who violates any provision(s) of Title 25 of the D.C. Official Code pursuant to D.C. Official Code § 25-823(1) (2009). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Code § 25-830 and 23 D.C.M.R. 800, *et seq.*

15. With regard to Charge I set forth in the Notice to Show Cause dated April 10, 2010, the Board must determine whether the Respondent violated the terms of its Voluntary Agreement by not posting signs that encourage patrons to not disturb the residential neighborhood and by not making announcements to the same effect near closing time. In this case, the Board finds, based upon the testimony of the witnesses and the practice of the establishment, that there is insufficient evidence to establish that the Respondent failed to comply with the terms and conditions of the Voluntary Agreement and therefore, the Board grants the Respondent's Motion to Dismiss.

16. The testimony of Investigator Dantzler was that she arrived seven minutes prior to closing time and did not witness the Respondent make an announcement to departing patrons with regard to keep the noise down on their way out the door. However, she conceded that the announcement could have been made prior to her arrival. Additionally, she also testified that a sign was posted on the establishment's wall on T Street N.W. which is the street that faces the residential neighborhood. There was no testimony that there are residences on the 14<sup>th</sup> Street N.W. side of the establishment.

17. Additionally, Investigator Dantzler testified that she could not hear any music emanating from the establishment, the house lights were up and the patrons inside the establishment were talking in an orderly manner. Furthermore, there was no evidence that the Respondent was aware of the screaming woman on the sidewalk outside the establishment or that she had even been a patron of the restaurant.

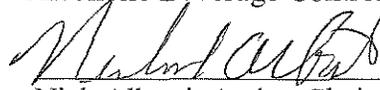
18. The testimony of the owner Mr. Miskinyar confirms that he is familiar with the terms and conditions of the Voluntary Agreement and that he endeavors to comply with them. Additionally, he has taken affirmative steps to hire MPD Reimbursable Detail to curtail noise created by persons outside the establishment. He also testified that the one sign that was posted to the establishment was posted on T Street N.W. at the recommendation of an ABRA investigator. He has since posted three more signs that cover both streets adjacent to the establishment. Finally, the Respondent indicated that he makes every effort to address the concerns of the neighborhood in a timely fashion.

19. Based upon the above, the Board finds that the Respondent did not violate the terms and conditions of the Voluntary Agreement as set forth in Charge I of the Notice to Show Cause dated April 10, 2010.

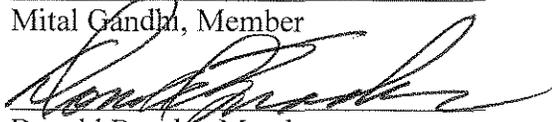
## ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** on this 30<sup>th</sup> day of June 2010, that Charge I, Specification A as set forth in the Notice to Show Cause dated April 28, 2010 alleging that the Respondent, The Griffin Group, t/a Policy, at premises 1902-1906 14<sup>th</sup> Street, N.W., Washington, D.C., holder of a Retailer's Class CR License, violated the terms of its Voluntary Agreement, should be and is hereby **DISMISSED**.

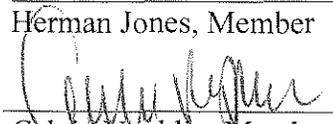
District of Columbia  
Alcoholic Beverage Control Board

  
\_\_\_\_\_  
Nick Alberti, Acting Chair

\_\_\_\_\_  
Mital Gandhi, Member

  
\_\_\_\_\_  
Donald Brooks, Member

\_\_\_\_\_  
Herman Jones, Member

  
\_\_\_\_\_  
Calvin Nophlin, Member

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 the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

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 (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).