

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

In the Matter of:)	
)	
The Stadium Group, LLC)	License Number: 82005
t/a Stadium)	Case Number: 10-PRO-00075
)	Order Number: 2010-488
Holder of a)	
Retailer's Class CN License)	
)	
at premises)	
2127 Queens Chapel Road, N.E.)	
Washington, D.C. 20018)	

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

ALSO PRESENT: The Stadium Group, LLC, t/a Stadium, Licensee

Stephen O'Brien, Esq., on behalf of the Licensee

Lauren Wallace, on behalf of the Group of Five or More Individuals,
Protestant

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

The Stadium Group, LLC, t/a Stadium (Licensee), sought to remove its license from safekeeping placed there on May 21, 2007, in accordance with D.C. Code § 25-791 (2004) following approval by the Board of the transfer of the license. The removal was deemed to be a substantial change and the matter was placarded for public notice and comment. The matter initially came before the Alcoholic Beverage Regulation Administration (ABRA) for a Roll Call Hearing on June 28, 2010, and a Status Hearing was held on July 14, 2010.

Protests were timely filed by a Group of Five or More Individuals, initially represented by Don and Abigail Padou, by a petition submitted on June 11, 2010. The Board later received notice that Lauren Wallace would represent the Group of Five or More Individuals in place of Don and Abigail Padou. *ABRA Protest File 10-PRO-00075, Letter of Representation*. Another Group of Five or More Individuals represented by Kathy Henderson also timely filed a protest on June 14, 2010, but was dismissed for failing to appear at the Status Hearing.

The parties engaged in mediation on July 19, 2010. No Voluntary Agreement was reached between the Licensee and the Protestant prior to the Protest Hearing. The Protest Hearing was held on August 4, 2010.

On June 28, 2010, the Protestant filed a Motion to Place Before the Board the Legal Impediments to Licensure Pursuant to 23 DCMR § 1601.8, which the Board treated as a Motion to Dismiss. In their Motion, the Protestants argued that the Board failed to follow its statutes and regulations regarding the relocation, safekeeping, and transfer of the Licensee's current liquor license. *See ABRA Protest File 10-PRO-00075, Motion to Place Before the Board the Legal Impediments to Licensure Pursuant to 23 DCMR § 1601.8*. Replying on July, 21, 2010, the Licensee argued that the Protestant is not permitted to object to the transfer of Black Ride III, Inc.'s license to the Licensee in 2007 under the doctrine of laches and equitable estoppel. *See ABRA Protest File 10-PRO-00075, Response in Opposition to Motion to Place Before the Board Legal Impediments to Licensure*. The Board notes that the Protestant raises issues previously addressed by the Board and affirmed by the Superior Court of the District of Columbia in Don Padou v. District of Columbia Alcoholic Beverage Control Board, Case No. 2010 CA 002750 B (D.C. Super. July 31, 2010).

After reviewing both parties' arguments, the Board is not persuaded by the Protestant's Motion. First, as indicated by the Superior Court of the District of Columbia, the Protestant lacks standing to challenge the process through which the Licensee obtained its ABC license. Don Padou v. District of Columbia Alcoholic Beverage Control Board, Case No. 2010 CA 002750 B, 4 (D.C. Super. July 31, 2010). As the Supreme Court noted in *Lujan*, the Protestant does not have standing to bring a suit over "[generalized grievances, which] claim[] only harm to . . . every citizen's interest in [the] proper application of the . . . law." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-74 (1992). Second, even if the Board reached the substance of the Protestant's claim, the Protestant's arguments lack merit. During the Protest Hearing, the Board noted that the Class CN License transferred to the Licensee was properly relocated. *Transcript August 4, 2010 (hereinafter Tr., 8/4/10)* at 6. *Tr., 8/4/10* at 6. Therefore, the Board denied the Protestant's Motion. *Tr., 8/4/10* at 7.

After the conclusion of the Protest Hearing, the Protestant timely filed a Proposed Findings of Fact and Conclusions of Law, which has been included in the record. *See* 23 DCMR 1717.2 (2008). The Board takes administrative notice of the Protestant's submission.

Pursuant to D.C. Official Code § 25-602(a) (2009), the protest issues are whether granting a Retailer's Class CN License would adversely impact the peace, order, and quiet of the Licensee's neighborhood.

FINDINGS OF FACT

1. The Licensee's Retailer's Class CN License was transferred to 2127 Queens Chapel Road, N.E., and placed in safekeeping with ABRA on May 27, 2007. *ABRA Licensing File No. 82005.*
2. The Licensee's establishment is located at 2127 Queens Chapel Road, N.E. *ABRA Licensing File No. 82005.*
3. The Board called ABRA Investigator Jabriel Shakoor to testify. *Tr.*, 8/4/10 at 23. Investigator Shakoor's report indicated that the establishment is located in a class C-M-2 zone. *ABRA Protest File 10-PRO-00075, Protest Report 2.* Ten licensed ABC establishments operate within 1,200 feet of the Licensee. *ABRA Protest File 10-PRO-00075, Protest Report 2.* No schools, recreation centers, public libraries, or day care centers are located within 400 of the Licensee. *ABRA Protest File 10-PRO-00075, Protest Report 2.*
4. Investigator Shakoor monitored the establishment from July 15, 2010, to July 24, 2010. *ABRA Protest File 10-PRO-00075, Protest Report 5.* He visited the Licensee's establishment on seven different occasions. *ABRA Protest File 10-PRO-00075, Protest Report 5.* Investigator Shakoor stated that during his investigation he did not observe loitering, criminal activity, or excessive trash. *Tr.*, 8/4/10 at 26. Investigator Shakoor noted that the establishment utilizes valet parking services and has its own parking lot. *Tr.*, 8/4/10 at 26. Furthermore, he observed that the establishment utilized the Metropolitan Police Department's (MPD) Reimbursable Detail. *Tr.*, 8/4/10 at 26, 38.
5. Investigator Shakoor stated that MPD received eight calls from the Licensee's address. *Tr.*, 8/4/10 at 27. Two of the calls resulted in ABRA incidents. *Tr.*, 8/4/10 at 28. According to Investigator Shakoor, from the time the Licensee first opened for business, MPD responded to an injury to a citizen and simple assault on May 19, 2010; a simple assault and assault with a deadly weapon on June 17, 2010; and a stolen automobile on July 7, 2010. *Tr.*, 8/4/10 at 30.
6. The Licensee called Keith Forney to testify. *Tr.*, 8/4/10 at 39. Mr. Forney testified that he owns 50 percent of The Stadium Group, LLC. *Tr.*, 8/4/10 at 39. He stated that RF Holdings purchased the land where the Licensee is located for \$5.1 million. *Tr.*, 8/4/10 at 41. Furthermore, Mr. Forney noted that an additional \$3 million was spent to rehabilitate the building that the establishment moved into and the parking lot near the establishment. *Tr.*, 8/4/10 at 42. Mr. Forney believed that the Licensee's investments improved real estate property values surrounding the establishment. *Tr.*, 8/4/10 at 44-45.
7. Mr. Forney testified that the exterior of the building does not suggest that nude dancing occurs inside. *Tr.*, 8/4/10 at 47. He believed that the establishment's signage is discrete. *Tr.*,

8/4/10 at 47, 65. Finally, Mr. Forney stated that the Licensee markets itself as a gentlemen's club and a restaurant. *Tr.*, 8/4/10 at 60.

8. Mr. Forney testified that the establishment utilizes MPD's Reimbursable Detail on every night, except Monday and Wednesday. *Tr.*, 8/4/10 at 51.

9. Mr. Forney testified that he had knowledge of the two incidents that led to ABRA investigative case reports being filed. *Tr.*, 8/4/10 at 52. In one incident, two women became engaged in a minor scuffle that was broken up by security within ten seconds of the fight starting. *Tr.*, 8/4/10 at 53. Regarding the other incident, a homeless man slashed the establishment's parking attendant with a bottle because he wanted to go to jail. *Tr.*, 8/4/10 at 53.

10. On cross-examination, Mr. Forney claimed that his employees do not solicit drinks. *Tr.*, 8/4/10 at 56. Mr. Forney also claimed that no liquor is served outside on the smoking deck and that patrons are not allowed to have alcohol outside. *Tr.*, 8/4/10 at 58. Mr. Forney further claimed that his employees do not touch patrons. *Tr.*, 8/4/10 at 59.

11. Mr. Forney stated that the Licensee had several meetings with the local Advisory Neighborhood Commission (ANC). *Tr.*, 8/4/10 at 63. Mr. Forney testified that a number of the Licensee's employees live in the community, including the Licensee's general manager. *Tr.*, 8/4/10 at 64.

12. Mr. Forney testified that his establishment has a number of security measures. *Tr.*, 8/4/10 at 65-67. First, the Licensee has bought tables specifically for table dances, which maintain the required three foot distance from patrons. *Tr.*, 8/4/10 at 66. Second, the Licensee installed one-way looking glass in order to help security observe the establishment. *Tr.*, 8/4/10 at 66. Third, the Licensee installed an infrared camera system, which is monitored by one of three general managers. *Tr.*, 8/4/10 at 66-67. Fourth, the Licensee has security randomly walk the hallway to ensure no wrongdoing occurs in the establishment's booths. *Tr.*, 8/4/10 at 66. Finally, the establishment logs all security incidents. *Tr.*, 8/4/10 at 68.

13. The Protestant called Benjamin Petok to testify. *Tr.*, 8/4/10 at 72. Mr. Petok visited the Licensee's establishment on June 16, 2010. *Tr.*, 8/4/10 at 73. He stated that the Licensee's staff checked his identification and he paid a cover charge. *Tr.*, 8/4/10 at 75. Mr. Petok witnessed a pole dance while in the establishment. *Tr.*, 8/4/10 at 76. Mr. Petok stated that patrons could engage in "incidental contact" with dancers when they put money in the dancer's garter belt. *Tr.*, 8/4/10 at 77.

14. Mr. Petok also stated that he received a lap dance in a private VIP room. *Tr.*, 8/4/10 at 77. He testified that the dancer was naked and grinded her body against his clothed body. *Tr.*, 8/4/10 at 77.

15. Mr. Petok testified that he witnessed patrons and employees drinking on the smoking deck. *Tr.*, 8/4/10 at 81. Mr. Petok testified that the Licensee did not offer alcohol for sale on the deck. *Tr.*, 8/4/10 at 81.

16. Mr. Petok also stated he could not leave the club until 2:00 a.m. due to a police incident. *Tr.*, 8/4/10 at 82. According to Mr. Petok, a valet attendant was attacked with a glass bottle. *Tr.*, 8/4/10 at 87.

17. Under cross-examination, Mr. Petok admitted that Don Padou, the initial designated representative of the Group of Five or More Individuals, reimbursed Mr. Petok for his visit to the Licensee's establishment. *Tr.*, 8/4/10 at 84. Mr. Petok testified that Mr. Padou paid Mr. Petok \$385.00 in order to reimburse him for his purchase of drinks, the valet parking, and admission for him and two friends. *Tr.*, 8/4/10 at 85. Mr. Petok testified that he attended the establishment with Marshall Chriswell and Joseph Karlya. *Tr.*, 8/4/10 at 92. Mr. Petok claimed that Mr. Padou did not tell him to engage in any specific activity while in the club and stated that he chose to obtain a lap dance himself. *Tr.*, 8/4/10 at 103.

18. Mr. Petok testified that he observed no disruption to the neighborhood during his visit to the establishment. *Tr.*, 8/4/10 at 90. Furthermore, Mr. Petok stated that he did not observe illegal activity and did not feel his safety was threatened while he visited the establishment. *Tr.*, 8/4/10 at 102.

19. The Protestant claimed that the Board could reject the Licensee's request on the grounds that the establishment did not follow its own rules. *Tr.*, 8/4/10 at 111-12.

CONCLUSIONS OF LAW

20. Pursuant to D.C. Official Code § 25-313(a) (2009) and 23 DCMR § 400.1(a) (2008), Licensee must demonstrate to the Board's satisfaction that the establishment for which a Retailer's Class CN License is sought is appropriate for the neighborhood in which it is located. The Board concludes that the Licensee has demonstrated that its request is appropriate.

21. Determining whether an establishment threatens the peace, order, and quiet of a neighborhood is a fact-based determination. *See* D.C. Code § 25-313(a)-(b) (2009). The Board also notes that an administrative agency's determination of credibility is entitled to "special deference." Gross v. D.C. Dep't of Employment Services, 826 A.2d 393, 395 (D.C. 2003); NGOM v. D.C. Dep't of Employment Services, 913 A.2d 1266, 1269 (D.C. 2006).

22. The Protestant requests that the Board deny the Retailer's Class CN License because it threatens the peace, order, and quiet of the surrounding neighborhood. The Protestant argues that merely by the establishment failing to follow its own rules, the Board should deny the Licensee's request.

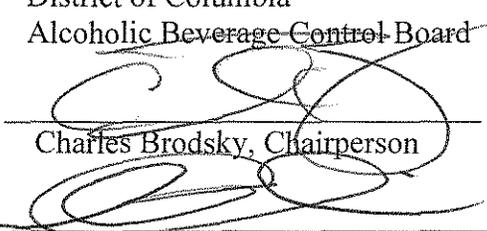
23. Based on the facts presented by the Licensee, the Board finds that granting the Retailer's Class CN License would not adversely impact the peace, order, and quiet of the locality where the Licensee seeks to locate its establishment. The Board notes that the Licensee has taken a number of security measures, including purchasing one-way looking glass and installing an infrared camera system. Furthermore, none of the incidents that generated ABRA reports lead the Board to believe that the establishment is unsafe. Therefore, the Board finds that the request for a Retailer's Class CN License is appropriate.

24. The Board also notes that the Protestant did not offer any facts to rebut the Licensee's presentation. It is true that the Protestant offered the testimony of Mr. Petok. But the Board notes that Mr. Petok was paid by Mr. Padou, a member of the Group of Five or More Individuals protesting the Retailer's Class CN License. Based on this fact, the Board finds Mr. Petok lacks credibility and the Board will disregard the majority of his testimony. As such, the only evidence that the Board will draw from Mr. Petok's testimony is the fact that he did not observe any disruptions to the peace, order, and quiet of the neighborhood. As a result, the Board finds that the Retailer's Class CN License is appropriate based on the evidence presented by both parties, the testimony of Investigator Shakoor and Mr. Forney, and the fact that the Mr. Petok, the Protestant's paid witness, did not observe any threats to peace, order, and quiet in the surrounding neighborhood.

ORDER

Therefore, it is hereby ORDERED on this 29th day of September 2010, that the Licensee's request for a Retailer's Class CN License filed by The Stadium Group, LLC, t/a Stadium (Licensee), at premises 2127 Queens Chapel Road, N.E., Washington, D.C., be and the same is hereby **GRANTED**.

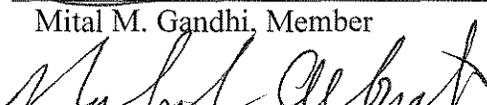
District of Columbia
Alcoholic Beverage Control Board



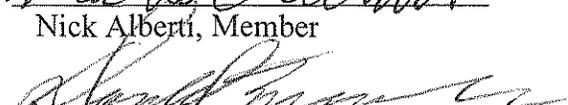
Charles Brodsky, Chairperson



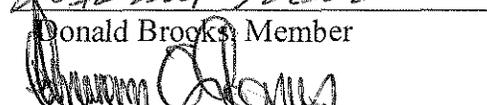
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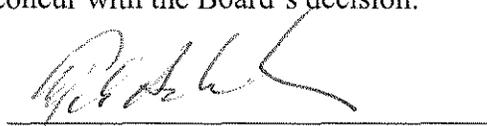


Herman Jones, Member

Calvin Nophlin, Member

I concur with the position taken by the majority of the Board but write separately to note the following:

I was especially concerned that Mr. Petok—who is apparently not a licensed private investigator—admitted to receiving reimbursement for his “investigation” of the establishment. If not downright illegal, a protestant subsidized lap dance is unseemly and demeans the Board, the process, and the Protestants. As such, I concur with the Board’s decision.



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, 1250 U Street, N.W., Third Floor, Washington, DC 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

(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).