THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:		
The Griffin Group, LLC t/a Policy	Case No.: License No: Order No:	16-CMP-00039 76804 2016-668
Holder of a Retailer's Class CR License		
at premises 1904 14th Street, N.W. Washington, D.C. 20009		

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member

ALSO PRESENT: The Griffin Group, LLC, t/a Policy, Respondent

Andrew Kline, Counsel, on behalf of the Respondent

Zachary Shapiro, Assistant Attorney General
Office of the Attorney General for the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

The Alcoholic Beverage Control Board (Board) dismisses the charge filed against The Griffin Group, LLC, t/a Policy, (hereinafter "Respondent" or "Policy"), which alleged Policy created a facility for dancing without Board approval in violation of D.C. Official Code § 25-762. While some dancing certainly occurs on the second floor, the Board is persuaded by the record that it is just as likely that the dancing is sporadic and isolated and that Policy merely operates a cocktail lounge with a large standing area on the second floor. Therefore, the Board dismisses the charge brought against Policy.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on May 11, 2016. *ABRA Show Cause File No., 16-CMP-*00039, Notice of Status Hearing and Show Cause Hearing, 2 (May 11, 2016). The Alcoholic Beverage Regulation Administration (ABRA) served the Notice on the Respondent, located at premises 1904 14th Street, N.W., Washington, D.C., on May 18, 2016, along with the Investigative Report related to this matter. *ABRA Show Cause File No., 16-CMP-*00039, Service Form. The Notice charges the Respondent with one violation, which if proven true, would justify the imposition of a fine, as well as the suspension or revocation of the Respondent's license.

Specifically, the Notice charges the Respondent with the following violation:

Charge I: **[On December 5, 2015, December 19, 2015, January 15, 2016, and January 17, 2016] [y]ou made a substantial change in the operation of your establishment by providing a space for dancing in violation of D.C. Official Code §§ 25-762(a) and 25-762(b)(6) . . . .**

Notice of Status Hearing and Show Cause Hearing, 2.

Both the Government and Respondent appeared at the Show Cause Status Hearing on June 22, 2016. The parties proceeded to a Show Cause Hearing and argued their respective cases on September 14, 2016.

FINDINGS OF FACT

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:

I. Background

1. Policy holds a Retailer's Class CR License at 1904 14th Street, N.W., Washington, D.C. *ABRA License No. 76804.*

II. ABRA Investigator Felicia Dantzler

2. ABRA received an email complaint claiming that Policy "was permitting dancing" and "did not have a dancing endorsement." *Transcript* (*Tr.*), September 14, 2016 at 8. ABRA Investigator Felicia Dantzler was assigned to investigate the complaint. *Id.*

3. Investigator Dantzler visited Policy "on Saturday, December 5th, 2015." *Id.* Upon arriving at the establishment, she spoke with one of the owners, Asum Walia. *Id.* Mr. Walia provided Policy's license, which indicated that the establishment did not have an entertainment endorsement that allows Policy to provide facilities for dancing. *Id.* at 10. Mr. Walia admitted that dancing occurred in the establishment on a regular basis. *Id.* at 11. Nevertheless,

Investigator Dantzler did not observe any dancing on the premises and she did not testify that she observed a dance floor or similar facility on the premises on December 5, 2015. *Id.* at 11-12.

4. On December 19, 2015, Investigator Dantzler returned to the establishment. *Id.* at 13. Mr. Walia indicated that people were dancing inside the establishment on the second floor. *Id.* She further observed a few isolated patrons dancing on the first floor, but did not testify that she observed anything that would qualify as a permanent space for dancing, dance floor, or similar facility. *Id.* at 14. Investigator Dantzler admitted that she did not go to the second floor during her visit on December 19, 2016; therefore, she could not testify as to whether Policy had installed a permanent space for dancing, a dance floor, or similar facility on December 19, 2016. *Id.* at 14.

5. Investigator Dantzler returned to the establishment on January 15, 2016. *Id.* at 18. At this time, Policy had applied to add dancing facilities to its entertainment endorsement, but had not yet been approved. *Id.* Upon entering the second floor, she heard loud music played by a disc jockey and observed some individuals to her left dancing. *Id.* at 19-20. To her back, she observed a number of stacked tables and chairs. *Id.* at 19. She also observed an open area without tables and chairs that was about 20 feet wide and 50 feet long. *Id.* at 20. In total, she observed about 30 people on the second floor, with about 12 of the 30 people dancing in the room. *Id.* at 43-44.

6. Investigator Dantzler returned to the establishment on January 17, 2016. *Id.* at 25. Upon entering the second floor, she observed people dancing, and observed tables and chairs stacked near the wall. *Id.* at 26-27. She estimates that she saw approximately 22 people standing and about eight people dancing. *Id.* at 44.

7. During her visits, Investigator Dantzler admitted that she did not see any areas marked off for dancing. *Id.* at 47.

III. Raj Multani

8. Raj Multani is one of the managing partners and owners of Policy. *Id.* at 68. Policy has been in operation since 2007. *Id.* at 69. The restaurant initially served French and American style food, but now serves Colombian style cuisine. *Id.* at 70.

9. The second floor has an approximate total square footage of 2200 square feet. *Id.* Only 1000 square feet is available for customers. *Id.* at 71. The second floor has fixed elevated banquettes for seating with tables and a bar. *Id.* at 71-72. There are approximately 75 fixed seats on the second floor. *Id.* at 104. The establishment also has the ability to set up large banquet tables for events and meetings. *Id.* at 72.

10. Mr. Multani admitted that people occasionally dance on the second floor. *Id.* at 74.

CONCLUSIONS OF LAW

11. The Board has the authority to fine, suspend, or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia (D.C.) Official Code pursuant to D.C. Official Code § 25-823(1). D.C. Official Code § 25-830; 23 DCMR § 800, *et seq.* (West Supp. 2016). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if the Board determines "that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed." D.C. Official Code § 25-447.

I. Standard of Proof

12. In this matter, the Board shall only base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2016). The substantial evidence standard requires the Board to rely on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

II. The Government Failed to Show Through Substantial Evidence that Policy Created a Permanent Space for Dancing in Violation of § 25-762(b)(6).

13. The Government, in this case, has not sufficiently proven that Policy created a permanent space for dancing on the second floor.

14. Under § 25-113a, "The licensee . . . class C/R . . . shall obtain an entertainment endorsement from the Board to be eligible to have entertainment, a cover charge, or offer facilities for dancing." D.C. Official Code § 25-113a.

15. In turn, the substantial change provision states that

> (a) Before a licensee may make a change in the interior or exterior, or a change in format, of any licensed establishment, which would substantially change the nature of the operation of the licensed establishment as set forth in the initial application for the license, the licensee shall obtain the approval of the Board in accordance with § 25-404.
>
> (b) In determining whether the proposed changes are substantial, the Board shall consider whether they are potentially of concern to the residents of the area surrounding the establishment, including changes which would:
>
> (6) Provide permanent space for dancing by patrons if none existed previously;

D.C. Official Code § 25-762(a), (b), (b)(6).

16. Section 25-726(b)(6) indicates that providing "permanent space for dancing by patrons if none existed previously" constitutes a substantial change. On its face, the statutory language

does not regulate the act of dancing by patrons, but rather a licensee's ability to provide space for dancing.

17. Generally, a violation of § 25-726(b)(6) will likely be found when the licensee fails to apply for an entertainment endorsement that includes the ability to provide dancing facilities and commits any of the following acts: (1) installs wood, vinyl or other flooring commonly associated with dance areas at nightclubs, ballrooms, and dance studios (e.g., wood paneling, floor LED light panels, or interactive floor panels); or (2) creates an open area distinguished from other areas in the premises or floor, such as through the use of barriers, elevated or depressed floors, furniture, lighting, or other markings. Moreover, persuasive evidence that a licensee created a "permanent space for dancing" may include the distribution of advertisements that indicate dancing will occur at the premises (e.g., flyers that say "dance party"); providing music and encouragement from the establishment or its agents to dance; the absence of tables and chairs for dining; or the presence of large standing crowds engaged in dancing.

18. While it is possible that in reality Policy created a permanent space for dancing on the second floor, the facts of this case make it just as likely that the second floor operates as a large cocktail lounge with a large standing area. This conclusion is supported by the following: first, the admissions by Mr. Walia on December 5 and December 19 that patrons were engaged in dancing on the second floor does not prove that the establishment created a permanent space for dancing, which is a different act. *Supra*, at ¶¶ 3-4. As noted above, the statute does not regulate dancing, but creating space for dancing, which means that sporadic and isolated incidents of patron dancing are not punishable under the statute. Consequently, because the investigator did not observe the second floor on December 5 and December 19 and Mr. Walia's statement does not preclude the possibility that some patrons were engaged in sporadic dancing, these two dates cannot be used to substantiate a violation of § 25-762 at Policy.

19. Second, the Board is not convinced that the Government presented sufficient evidence regarding the layout of the second floor to substantiate the charged violation. There is no evidence that Policy installed a stereotypical dance floor made of wood, vinyl, or other material. *Supra*, at ¶¶ 4, 7. Moreover, there is insufficient evidence in the record that Policy used barriers, elevation, furniture, lighting, or other markings to create a dance floor, or that Policy or its agents otherwise encouraged or invited patrons to dance. *Id.* Lastly, while it can be argued that the entire open space on the second floor may constitute a dance floor, the lack of a large crowd engaged in dancing on the second floor during the investigator's visits leaves the Board hesitant to state with confidence that Policy is not merely operating a cocktail lounge with a large standing space for bar patrons on the second floor. *Supra*, at ¶¶ 4-6

20. Consequently, the Board is persuaded that Policy should get the benefit of the doubt in this case, and not be held liable for the charge brought by the Government.

ORDER

Therefore, the Board, on this 30th day of November 2016, **DISMISSES** the charge filed against The Griffin Group, LLC, t/a Policy. The ABRA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage Control Board

Donovan Anderson, Chairperson

Nick Alberti, Member

Mike Silverstein, Member

James Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, 430 E Street, N.W., Washington, D.C. 20001; (202-879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 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).