

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

In the Matter of:)		
)		
)	Case No.:	13-PRO-00172
Inner Circle 1223, LLC)	License No:	083919
t/a Dirty Martini Inn Bar/Dirty Bar)	Order No:	2015-019
)		
Application to Renew a)		
Retailer's Class CN License)		
)		
at premises)		
1223 Connecticut Avenue, N.W.)		
Washington, D.C. 20036)		

BEFORE: Ruthanne Miller, Chairperson
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: Inner Circle 1223, LLC, t/a Dirty Martini Inn Bar/Dirty Bar, Applicant

Andrew Kline, Counsel, of The Veritas Law Firm, on behalf of the Applicant

Abigail Nichols, Commissioner, Advisory Neighborhood Commission (ANC) 2B, Protestants

Sarah Peck and Carl Nelson, on behalf of a Group of Nineteen Residents and Property Owners (Peck Group), Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

In Board Order No. 2014-507, the Alcoholic Beverage Control Board (Board) renewed the license of Inner Circle 1223, LLC, t/a Dirty Martini Inn Bar/Dirty Bar, (hereinafter “Applicant” or “Dirty Martini”) on the condition that it refrain from generating amplified music that may be heard in a residence and keep the door to its rooftop seating area closed, except when used for the normal ingress and egress of patrons and staff. *In re Inner Circle 1223, LLC, t/a Dirty Martini Inn Bar/Dirty Bar*, Case No. 13-PRO-00172, Board Order No. 2014-507, 2 (D.C.A.B.C.B. Dec. 10, 2014). Subsequently, the Board received a Motion for Reconsideration (Motion) from the Peck Group. The Applicant then submitted a reply on January 13, 2015, which opposes the Motion.¹ The Board did not receive any additional pleadings from Advisory Neighborhood Commission 2B.

The Peck Group generally agrees with the decision issued by the Board, but urges the Board to take harsher measures against the establishment. *Mot. for Recon.*, 1 (Dec. 19, 2014).

Specifically, the Peck Group requests that the Board impose the following alternative conditions:

1. Dirty Martini must keep the door between the Dirty Bar and the Outdoor Bar closed, and install a double door system to contain noise emanating from the Dirty Bar when patrons and staff move between the two bars,
2. Based on Dirty Martini[']s failure to adequately contain its sound, the entertainment endorsement for the Outdoor Bar is revoked. Dirty Martini must remove the sound equipment from the Outdoor Bar within 30 days of this Order. Further, Dirty Martini may not produce any amplified or live music on the Outdoor Bar.
3. In addition to ordering Dirty Martini to take necessary steps to ensure residents cannot hear its sound in their homes, as is required by law, the Board orders Dirty Martini to employ additional sound mitigation and procedures to ensure that noise cannot heard outside the walls of establishment.
4. The Board shall impose[] the stiffest penalty allowed by law, and orders Dirty Martini’s license to be suspended for 30 days if future noise violations are found.

Mot. for Recon., 3 (Dec. 19, 2014).

The Board denies the Motion, because the Board is satisfied that the conditions imposed in Board Order No. 2014-507 address the peace, order, and quiet issues raised by the Protestants.

First, the Peck Group has not persuaded the Board that this case is materially different from similar cases where the evidence demonstrated that the licensee’s amplified music could be

¹ The Board would have denied the Peck Group on its own for the reasons stated in this decision; therefore, the fact that the Applicant’s opposition may not have been submitted in a timely fashion does not change the Board’s decision in this matter. *See* 23 DCMR § 1716.2 (West Supp. 2014).

heard inside a residence. *See e.g., In re Solomon Enterprises, LLC, t/a Climax Restaurant & Lounge*, Case No. 13-PRO-00152, Board Order No. 2014-474, ¶ 35 (D.C.A.B.C.B. Nov. 15, 2014) citing *In re 19th and K, Inc., t/a Ozio Martini & Cigar Lounge*, Case No. 13-PRO-00151, Board Order No. 2014-366, ¶ 59 (D.C.A.B.C.B. Oct. 1, 2014). Therefore, the Board is not inclined to depart from its current precedent related to the resolution of noise problems.²

Second, the Board cannot adopt the Peck Group's penalty recommendation, because the Board does not issue fines during protest proceedings. D.C. Official Code § 25-823. Furthermore, the Board will not prejudge any future show cause proceedings that may be related to this Order.³

Third, the Board rejects the extra conditions proposed by the Peck Group, because the underlying basis for the proposal is based on the Peck Group's incorrect interpretation of the law. It is incorrect to argue that it is always illegal for an establishment to generate amplified music that may be heard outside the establishment. *Mot. for Recon.*, at 3. Specifically, under § 2701.1, a licensee is prohibited from generating noise between the hours of 9:00 p.m. and 7:00 a.m. that exceeds 60 dBA in a commercial zone; therefore, under this law, it is legal for a licensee to generate amplified music that may be heard in the streets at levels below the 60 dBA threshold. *Id.*; 20 DCMR § 2799 (West Supp. 2014). In addition, the Peck Group's proposed conditions ignore the fact that the other noise laws do not provide a "one-size fits all" standard. Instead, the noise disturbance standard and the disorderly conduct law cited in the Board's prior Order create totality of the circumstances tests, which may require a case-by-case determination as to whether the law applies. D.C. Official Code § 22-1321(d); 23 DCMR § 2799 (West Supp. 2014). Consequently, the Board's decision in this case is limited to the substantial interest identified by the court in *In re T.L.*, 996 A.2d 805 (D.C. 2010).

In contrast to current law related to noise, the conditions imposed by the Board in this case create bright line operating standards that are easy to enforce. Furthermore, the Peck Group should also note that a violation of the Board's conditions will be deemed a primary tier violation, which may result in higher penalties and further conditions being imposed during a show cause hearing. D.C. Official Code § 25-447(f); 23 DCMR § 800 (West Supp. 2014) (see § 25-823(6)).

Finally, the Board rejects imposing specific soundproofing measures on the Applicant. It is not important how Dirty Martini complies with the Board's Order, only that the result ordered by the Board is achieved. While it may be advisable for Dirty Martini to remove all speakers outside the establishment and install double doors, the Board, as it has in other cases, will grant the Applicant the flexibility to determine the most appropriate means of satisfying the conditions imposed by the Board.

² It is also important to note that the Board's decision in this matter rests on the substantial government interest recognized in *In re T.L.*, 996 A.2d 805 (D.C. 2010). At this time, the Board is not persuaded that going beyond *T.L.* is required; especially, when going beyond the court's decision may raise First Amendment issues.

³ Nevertheless, it should be noted that the licensee's failure to comply with the Board's conditions may be considered during the next renewal period. D.C. Official Code § 25-315(b).

ORDER

Therefore, the Board, on this 14th day of January 2015, hereby **DENIES** the Motion for Reconsideration filed by the Peck Group. The ABRA shall deliver a copy of this order to the Applicant, ANC 2B, and the Peck Group.


District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Donald Brooks, Member



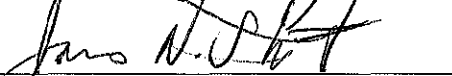
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Pursuant to 23 DCMR § 1719.1, 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).