

ATTACHMENT S

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THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of)

Jefferson Grill, Inc.)

t/a Macombo Lounge)

Holder of a Retailer's License)

Class "CN" – at premises)

5335 Georgia Avenue, N.W.)

Washington, D.C.)

Respondent)

Case No.: 8699-02/030C

Order No.: 2005-01

BEFORE:

Charles A. Burger, Chairperson¹

Vera M. Abbott, Member²

Audrey E. Thompson, Member

Judy A. Moy, Member

Peter B. Feather, Member²

Albert G. Lauber, Member²

Eartha Isaac, Member²

ALSO PRESENT:

Fred P. Moosally, III, General Counsel
Alcoholic Beverage Regulation Administration

William Bennett, Assistant Attorney General, on behalf of
the District of Columbia

Simon Osnos, Esquire, on behalf of the Respondent

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

On June 21, 2002, the Alcoholic Beverage Control Board ("Board"), pursuant to D.C. Official Code § 25-447(c) (2001) and Title 23 of the District of Columbia Municipal

¹ Current ABC Board Chairperson Charles A. Burger participated as a member of the ABC Board during both the November 13, 2002 and December 4, 2002 proceedings. Former ABC Board Chairperson Roderic L. Woodson, Esquire, who chaired both the November 13, 2002 and December 4, 2002 proceedings is no longer a member of the ABC Board.

² ABC Board member Vera M. Abbott did not participate in all of the proceedings. As a result, Ms. Abbott did not vote on this matter. ABC Board members Peter Feather, Albert Lauber, and Eartha Isaac were not members of the Board when these proceedings were initiated and did not participate or vote on this matter. Pursuant to D.C. Official Code § 25-431(b) (2001), three members of the Board constitute a quorum.

Regulations ("DCMR") § 1502.1 (1997)³, scheduled a show cause hearing on the Retailer's License Class "CN" held by Jefferson Grill, Inc., t/a Macombo Lounge ("Respondent"), at premises 5335 Georgia Avenue, N.W., Washington, D.C., based upon investigations conducted by Alcoholic Beverage Regulation Administration Auditor and Financial Investigator D'Maz Lumukanda and Department of Consumer and Regulatory Affairs Investigator Clement A. Stokes, III. The grounds for the show cause hearing were set forth in the Notice to Show Cause, dated June 21, 2002, which was served upon the Respondent.

The case came before the Board for show cause proceedings held on November 13, 2002 and December 4, 2002 based upon the charge set forth in the June 21, 2002 Notice to Show Cause, as described below. At the conclusion of the December 4, 2002 show cause hearing, the Board took its decision in this matter under advisement.

The Board considered in making its decision the evidence addressed at the hearings, the testimony of the witnesses, the arguments of counsel, exhibits admitted in the hearings, and the documents comprising the Board's official file in making the following:

FINDINGS OF FACT

1. The Respondent's establishment holds a Class "CN" Retailer's License and is located at 5335 Georgia Avenue, N.W., on the corner of Jefferson Street, N.W., and Georgia Avenue, N.W. (Tr. 11/13/02 at 11; Respondent's Exhibit No. 4.) The establishment's current approved hours of operation are Sundays from 6 p.m. to 2 a.m.; Monday through Thursday from 2 p.m. through 2 a.m.; and Friday and Saturday from 2 p.m. until 3 a.m. (Tr. 12/04/02 at 40; See Application File No. 8699.) The Respondent is permitted to operate a nightclub that offers nude performances, pursuant to D.C. Official Code § 25-371 (2001), as the Respondent regularly provided entertainment by nude dancers prior to December 15, 1993. (See Application File No. 8699.)

2. The Board issued the Notice to Show Cause, dated June 21, 2002, to the Respondent, based upon investigations conducted by Alcoholic Beverage Regulation Administration ("ABRA") Auditor and Financial Investigator D'Maz Lumukanda and Department of Consumer and Regulatory Affairs ("DCRA") Investigator Clement A. Stokes, III. (See Show Cause File No. 8699-02/030C.) The Notice to Show Cause, dated June 21, 2002, charges the Respondent with allowing entertainers, employees and customers to perform or simulate the performance of acts of oral, anal, or vaginal sexual intercourse, masturbation, flagellation, or bestiality, and to fondle in an erotic manner the breasts, buttocks, anus, or genitals of another person on the licensed premises, in violation of 23 DCMR § 904.3 (1997).⁴ (See Show Cause File No. 8699-02/030C.)

³ The ABC Board adopted a new version of Title 23 of the District of Columbia Municipal Regulations ("DCMR") as published in the D.C. Register at 51 DCR 4309 (April 30, 2004). The Board's show cause authority can now be found at 23 DCMR § 1604.1 (2004) as well as D.C. Official Code § 25-447 (2001).

⁴ It should be noted that 23 DCMR § 904.3 (1997) was not adopted as part of the current April 30, 2004 version of Title 23 of the DCMR. However, the Board's show cause hearing on this matter concluded prior to the adoption of the April 30, 2004 version of Title 23 of the DCMR, with only the Board's written decision left to be issued.

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3. D'Maz Lumukanda is employed by ABRA as an Auditor and Financial Investigator. (Tr. 11/13/02 at 6-7, 61.) Investigator Lumukanda visited the Respondent's establishment as an undercover investigator on Friday, April 26, 2002. (Tr. 11/13/02 at 7; Government's Exhibit No. 2.) He entered the establishment at approximately 10:45 p.m. with a Metropolitan Police Department ("MPD") officer who was also undercover. (Tr. 11/13/02 at 7, 14.) Investigator Lumukanda was inside of the location for approximately one and a half hours. (Tr. 11/13/02 at 14, 22, 53.)

4. With respect to the operations of the establishment, Investigator Lumukanda observed a woman in her forties or fifties who appeared to be managing the establishment because she handled the money. (Tr. 11/13/02 at 33-36, 43-44, 59-60.) Investigator Lumukanda observed all of the Respondent's dancers wearing two-piece bikinis and noted that the establishment's waitresses were dressed differently than the dancers. (Tr. 11/13/02 at 42, 48, 55-59.) He noted that a security guard was located at the front door of the establishment and that the security guard conducted a weapons search and checked identification prior to admitting him into the establishment. (Tr. 11/13/02 at 43, 51.) Investigator Lumukanda found the establishment well lit, with the exception of the dancers' stage performances when the lights were dimmed. (Tr. 11/13/02 at 52.) Investigator Lumukanda observed the dancers perform on two (2) stages. (Tr. 11/13/02 at 52.) Investigator Lumukanda witnessed approximately six (6) dancers in bikinis performing and noted that the dancers would remove their bikinis during their performance. (Tr. 11/13/02 at 42, 47-48, 55-56; Government's Exhibit No. 1.) He noted that one dancer performed on the stage at a time and that during the dance the dancer was completely nude, but put her bikini back on at the conclusion of the performance. (Tr. 11/13/02 at 57.) Investigator Lumukanda did not observe dancers on stage being touched by patrons while performing. (Tr. 11/13/02 at 55.)

5. With respect to conduct occurring on the licensed premises, Investigator Lumukanda observed the dancers constantly walking around the premises in bathing suits "shaking hands and giving hugs" and "sitting on patron's laps and accepting tips." (Tr. 11/13/02 at 12, 17, 22, 58.) Investigator Lumukanda also witnessed the Respondent's patrons put money in the dancers' "leg belt" when the dancers were on stage. (Tr. 11/13/02 at 12.) Investigator Lumukanda also observed dancers seated with patrons in a booth where the dancers allowed patrons to "liberally touch their bodies," including their arms and legs. (Tr. 11/13/02 at 12, 30, 45-46.) Investigator Lumukanda also observed on several occasions -- while positioned approximately fifteen (15) feet away -- a dancer clothed in an "American print bikini" who would lead a patron into an enclosed area, located adjacent to the booth, for a private dance where the patron would "have his back against the wall" and she would dance in front of the patron and allow him to touch her arms, legs, buttocks, and breasts. (Tr. 11/13/02 at 13-14, 21-23, 27-32, 47-49, 54; Government's Exhibit Nos. 1 and 2.) Investigator Lumukanda observed the patrons fondle the dancer's breasts, buttocks, and genital area in an erotic manner and noted that they were "grinding and caressing" in a manner that exceeded a mere touch. (Tr. 11/13/02 at 54; Government's Exhibit No. 2.) Investigator Lumukanda found the dancer to be the Respondent's employee as she: (1) accepted money from patrons for her private

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dance; (2) was being provided change by the bartender just like the rest of the establishment's dancers; and (3) was dressed like the rest of the dancers as she was only wearing a bikini. (Tr. 11/13/02 at 13, 23-24.) This was the only dancer that Investigator Lumukanda observed giving a private dance. (Tr. 11/13/02 at 22.) Investigator Lumukanda also observed that the dancers were soliciting payments and tips from patrons and that the patrons were located less than three (3) feet from the stage on which the dancers completed their performance. (Tr. 11/13/03 at 39-40.)

6. Investigator Clement A. Stokes, III, is employed by DCRA, Office of Investigations, and visited the establishment on five (5) occasions with the establishment closed during two (2) of his visits. (Tr. 11/13/02 at 63-64, 113, 117.) The show cause hearing focused on Investigator Stokes' visits to the establishment on January 19, 2002, at approximately 8:00 p.m., on February 1, 2002, at approximately 7:30 p.m., and on May 31, 2002, at approximately 7:00 p.m. (Tr. 11/13/02 at 65-68, 77-80, 82, 84.)

7. With respect to the establishment's operations, Investigator Stokes observed a security guard positioned at the front door of the establishment and he was patted down prior to his entering the establishment. (Tr. 11/13/02 at 80.) Investigator Stokes was not charged a cover for admission. (Tr. 11/13/02 at 80.) He stated that the clientele was predominantly male and patrons appeared to be over the age of twenty one (21). (Tr. 11/13/02 at 124.) Investigator Stokes observed that security was located only at the front door and nowhere else on the premises. (Tr. 11/13/02 at 123.) Investigator Stokes noted that the establishment became crowded as the evening progressed during his visits. (Tr. 11/13/02 at 113.) With regard to who was managing the establishment, Investigator Stokes observed a female individual with a badge around her neck, which he assumed was an Alcoholic Beverage Control ("ABC") manager's license, was watching the bar, collecting money, and giving money to the dancers. (Tr. 11/13/02 at 114-116, 126-127.) He stated that neither the manager, security, or other employees of the establishment tried to prevent patrons from touching the dancers. (Tr. 11/13/02 at 102-103, 116.) He also never witnessed anyone from the establishment trying to discourage lap dancing from taking place, which appeared to be a regular way of doing business at the establishment. (Tr. 11/13/02 at 116-117, 121.)

8. With respect to the dancer's conduct, Investigator Stokes observed African-American female dancers on stage wearing bikinis. (Tr. 11/13/02 at 80-81.) Investigator Stokes noted that the dancers would perform on stage for approximately fifteen (15) minutes each and that seven (7) dancers were present during his February 1, 2002 visit and eight dancers present during his May 31, 2002 visit. (Tr. 11/13/02 at 82, 84, 92-93, 103-104.) Investigator Stokes stated that he observed dancers on stage dancing "in a sexual nature while removing their clothes until they were fully nude." (Tr. 11/13/02 at 81, 85.) Specifically, Investigator Stokes noted that during his January 19, 2002 visit, a dancer on stage was "fondling her breast nipples" on three (3) different occasions in an erotic manner during the dance. (Tr. 11/13/02 at 81, 91-92; Government's Exhibit No. 3.) Investigator Stokes observed on his February 1, 2002 visit that during the dance each performer would "lie on their back facing the audience with their legs wide open exposing their vagina." (Tr. 11/13/02 at 92-93.) Investigator Stokes observed that each

dancer would stimulate their vagina with their hand during the performance. (Tr. 11/13/02 at 82, 93.) On February 1, 2002, Investigator Stokes also observed one dancer, with the stage name "Silhouette", who was receiving tips from male patrons while she was on stage with her legs open and vagina exposed and that patrons would "rub between [the dancer's] legs" and touch her vagina as they put money into her garter belt. (Tr. 11/13/02 at 83-84, 99-104.) Investigator Stokes did not observe the performance or simulation of the performance of oral, anal, or vaginal sexual intercourse while on stage. (Tr. 11/13/02 at 92, 98-102.) During his May 31, 2002 visit, Investigator Stokes observed each dancer stimulating their breast nipples and vagina. (Tr. 11/13/02 at 86, 104; Government's Exhibit No. 5.) Investigator Stokes observed the dancers move from stage to stage and observed this activity conducted by eight (8) different female dancers over a period of four (4) hours between two (2) stages. (Tr. 11/13/02 at 107-108.)

9. With respect to illegal conduct, Investigator Stokes noted that a customer remarked during his February 1, 2002 visit that he wanted to have sex with one of the dancers, with the stage name "Silhouette". (Tr. 11/13/02 at 82-83, 95, 104; Government's Exhibit No. 4.) The patron later propositioned the dancer for sexual intercourse stating that he had "one thousand dollars, a Master Card, and Visa." (Tr. 11/13/02 at 82-83.) The patron told the dancer, "Silhouette", "he could pay her more money than she would make on stage" and he gave the dancer his telephone number and told her that "he wanted to meet her" and pulled out his wallet. (Tr. 11/13/02 at 82-83, 95-98, 104-105.) Investigator Stokes also questioned a male patron about whether he could "buy sex" from one of the dancers and that the patron responded affirmatively. (Tr. 11/13/02 at 88.) The patron identified two (2) dancers, with the stage names of "Dallas" and "Reds", employed by the Respondent and present during his May 31, 2002 visit, from whom he could "buy sex." (Tr. 11/13/02 at 88-89.) Investigator Stokes later propositioned one of the dancers, "Reds", by asking how much does she charge and by telling her that he wanted sexual intercourse. (Tr. 11/13/02 at 89-90, 110-111; Government's Exhibit No. 5.) He stated that the dancer, with the stage name "Reds", replied that she charges two hundred dollars (\$200.00) an hour. (Tr. 11/13/02 at 89-90, 110-111; Government's Exhibit No. 5.)

10. With respect to prohibited conduct on the licensed premises, Investigator Stokes observed a dancer with the stage name "Dallas" giving "lap dances" to patrons and "grinding" with patrons in an enclosed area. (Tr. 11/13/02 at 86-88, 91, 106-108, 121-122.) He stated that "Dallas" was "giving stand up lap dances using her buttocks grinding on the ... male patrons ... they [male patrons] were grinding back." (Tr. 11/13/02 at 86.) On May 31, 2002, Investigator Stokes also observed dancers with the stage names of "Reds" and "Shiver" performing a grinding motion using their buttocks on the patrons' crotch area seated around the stage while receiving a tip. (Government's Exhibit No. 5.) Investigator Stokes also noted that on May 31, 2002 he observed the dancer, with the stage name "Reds", take her breasts and rub them in the face of patrons, including in the enclosed area, while receiving tips. (Tr. 11/13/02 at 90-91, 105-106; Government's Exhibit No. 5.) Investigator Stokes observed "Reds" giving approximately four (4) or five (5) "lap dances" in an enclosed area to five (5) different patrons for approximately one (1) or two (2) minutes per session. (Tr. 11/13/02 at 108-109.) He noted that on several occasions a waitress would "[w]alk past the enclosed area where the

dancers were performing ... with [the patron's] genital area pressed against the buttocks of the dancer ... [with both] moving simultaneously in an erotic manner." (Tr. 11/13/02 at 109-110.) Investigator Stokes noted that money was exchanged after the "lap dance." (Tr. 11/13/02 at 120.) Investigator Stokes stated that a dancer, "Dallas", approached him and offered him a "lap dance," but he declined. (Tr. 11/13/02 at 119-120.)

11. James Adkins is the President of Jefferson Grill, Inc. (Tr. 11/13/02 at 3-4, 133.) He has a Bachelor of Science degree in Physics from the University of Missouri and a Master of Science/Technology Management degree from the University of Maryland. (Tr. 11/13/02 at 139-142.) Mr. Adkins retired from the United States Department of Defense after forty-one (41) years of service where he served as a Senior Scientist. (Tr. 11/13/02 at 135, 139-143.) He has owned the establishment since 1967. (Tr. 11/13/02 at 143-144.) The establishment was originally a "Gay Nineties Club" with a piano player and began with single dancers wearing bikinis, but later featured nude dancing. (Tr. 11/13/02 at 139-142.) Mr. Adkins has been involved with the management of the club since 1967 and is present there several times per week, when he is in town. (Tr. 11/13/02 at 144, 179.)

12. With respect to the establishment's operations, Mr. Adkins testified he manages the establishment and his sons, Gerard and James, also manage the establishment. (Tr. 11/13/02 at 144-145.) In January 2002 and part of February 2002, Mr. Adkins had an acting manager in her twenties named Shana Reynolds. (Tr. 11/13/03 at 159-162, 171.) Shana Reynolds was the establishment's manager during the January 19, 2002 and February 1, 2002 incidents. (Tr. 11/13/02 at 162.) Ms. Reynolds was terminated in February 2002 because "she was too chummy with the girls," did not enforce the rules, and did not always open the establishment on time. (Tr. 11/13/02 at 162-163, 170-171, 194-197.) Additionally, Shana Reynolds' mother tended bar at the establishment two (2) to three (3) times a week during January 2002 and February 2002. (Tr. 11/13/02 at 159-161.) Gerard Adkins took over for Shana Reynolds as manager and is now responsible for the establishment's day-to-day operations. (Tr. 11/13/02 at 162, 168, 203.) Gerard Adkins was the manager for the establishment on May 31, 2002. (Tr. 11/13/02 at 162.) The establishment's managers are tasked with ensuring that the dancers follow the rules, including not engaging in any physical touching contact with customers. (Tr. 11/12/02 at 161, 172.)

13. Mr. Adkins stated that the establishment has three (3) video cameras, with a video camera located by: (1) the front door; (2) the bottom right corner of the bar; and (3) the front stage, which are used to "observe patrons and dancers." (Tr. 11/13/02 at 146-147, 150-151, 172-173; Respondent's Exhibit No. 2.) The establishment contains two (2) stages -- a center or front stage, and a back stage. (Tr. 11/13/02 at 149-151; Respondent's Exhibit No. 2.) Mr. Adkins stated that he employs two (2) security persons who generally stay near the door but circulate around the establishment. (Tr. 11/13/02 at 163-166.) Mr. Adkins testified that the security must often tell people to "sit down from the stage" because patrons get around the stage to get close to see the dancers. (Tr. 11/13/02 at 163-167.) The establishment only has one (1) booth. (Tr. 11/13/02 at 151-152.)

14. With respect to the dancer's conduct on the licensed premises, Mr. Adkins stated that the establishment has a notice titled "All Dancers Will Observe The Following:" that contains procedures that the dancers must follow, which were recently added within the last four (4) or five (5) months, that is posted on the stages and the dressing room. (Tr. 11/13/02 at 134, 152; Respondent's Exhibit No. 5.) Mr. Adkins also provides a document titled "Rules Concerning Dancer's Conduct" that is provided to the dancers and has been in place for about five (5) years. (Tr. 11/13/02 at 134, 164, 172; Respondent's Exhibit No. 6.) Mr. Adkins noted that these rules are posted in the dressing room and each dancer is provided with a copy. (Tr. 11/13/02 at 134, 152-153; Respondent's Exhibit No. 6.) He testified that he cautioned the dancers that patrons cannot "hug them" or otherwise touch them and that it is a violation of the establishment's rules of conduct. (Tr. 11/13/02 at 155.) Mr. Adkins noted that dancers have been terminated for breaking the rules, including touching customers. (Tr. 11/13/02 at 157.) He stated that the dancer, with the stage name, "Reds" was terminated in April 2002 or May 2002, for violating the establishment's rules and allowing customers to touch her genital area. (Tr. 11/13/02 at 156-157.) Mr. Adkins testified that he cautioned her "about lying on the floor." (Tr. 11/13/02 at 156-157.) He stated that his son, Gerard, reported to him on two (2) or three (3) occasions that "Reds" was a problem as she was not listening to him or following the rules. (Tr. 11/13/02 at 156-158.) Mr. Adkins testified that he was not aware of any rule violations by the dancer with the stage name of "Dallas". (Tr. 11/13/02 at 158.) Mr. Adkins collected several hundred dollars in fines from dancers violating the establishment's rules of conduct during the year. (Tr. 11/13/02 at 184.)

15. The establishment has a banner on the back stage that says "[d]o not touch the dancers." Tr. 11/13/02 at 148-149.) Mr. Adkins testified that if a patron improperly touches a dancer, the patron would be removed from the establishment. (Tr. 11/13/02 at 156-157.) He further stated that if his employee observes a patron improperly touching a dancer, the employee tells the patron, "no touching, please move back from the stage" or "tip and move; don't stand." (Tr. 11/13/02 at 166-167.) Mr. Adkins was not aware of any of the dancers being arrested for prostitution. (Tr. 11/13/02 at 164.) He testified that he did not learn about the incidents until a month later. (Tr. 11/13/02 at 170.)

16. Gerard Adkins has an ABC manager's license and is the General Manager of the establishment and son of James Adkins. (Tr. 12/4/02 at 3-5, 22.) He is forty-one (41) years old and graduated from Calvin Coolidge in 1979 and has been working at the establishment, on and off, for twenty (20) years. (Tr. 12/4/02 at 10-11.) Mr. Adkins is the establishment's primary full time manager now -- since starting back to work at the establishment on February 21, 2002 -- and works thirteen (13) hour shifts. (Tr. 12/4/02 at 11, 21-22.) His duties include set up, stocking liquor and beer, paying employees, and monitoring activity inside the establishment. (Tr. 12/4/02 at 12, 26.) Mr. Adkins is also responsible for hiring and firing the dancers. (Tr. 12/4/02 at 13.) Mr. Adkins' brother also has an ABC manager's license and works at the establishment approximately five (5) times a week. (Tr. 12/4/02 at 22, 25, 64.)

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17. With respect to the dancer's conduct, Mr. Adkins stated that each dancer is required to sign a contract to obey the establishment's rules and regulations, which are provided to each dancer. (Tr. 12/4/02 at 62-63.) He noted that under the establishment's rules, a dancer is only allowed to stand up and dance during the dancer's performance. (Tr. 12/4/02 at 31, 71.) Mr. Adkins testified that the dancers are not allowed to touch themselves in any sort of manner, they're not allowed to lay down on the stage or after they get off the stage, they're not allowed to get up and walk around and dance in front of the customers at any time. (Tr. 12/4/02 at 31, 71.) He noted that dancers are permitted "to walk around the club and shake patrons hands, but not to dance around the customers." (Tr. 12/4/02 at 16, 72.) The establishment's fine range is generally between fifteen (15) and thirty (30) dollars. (Tr. 12/4/02 at 17.) Mr. Adkins stated that he intended to change in writing the establishment's existing written fine policy. (Tr. 12/4/02 at 42-43, 53-54.) The dancers work on "tips only" and must pay the establishment a "dance fee", which is five dollars (\$5.00), at the end of their shift. (Tr. 12/4/02 at 48, 59-60, 71.)

18. With respect to prohibited conduct, Mr. Adkins stated that the dancer "Reds" was terminated in June 2002 and told not to return as she was always "trying to sneak around and do certain things" with patrons of the establishment. (Tr. 12/4/02 at 12-17.) He witnessed the dancer "Reds" take patrons into the enclosed vestibule area. (Tr. 12/4/02 at 14-16, 18.) Mr. Adkins testified that he did not see the dancer "Reds" engaging in lewd or sexual acts with customers, but that after she finished her dance on stage she was "dancing around the tables to collect more money" in violation of the establishment's rules and that she was "fined on several occasions and given warnings." (Tr. 12/4/02 at 15-17.) He testified that he was not aware that the dancer "Reds" allowed customers to touch and fondle her private parts. (Tr. 12/4/02 at 18.)

19. Mr. Adkins stated that the dancer named "Dallas" was fined for the same violations as the dancer "Reds" and left the establishment two (2) months ago. (Tr. 12/4/02 at 19-20.) Specifically, she was fined for dancing around the tables and trying to engage in lewd contact with patrons after she finished dancing. (Tr. 12/4/02 at 20-21.)

20. With respect to the establishment's operations, Mr. Adkins testified that subsequent to the November 13, 2002 hearing, the establishment installed a camera to view the vestibule area, which is turned on during business hours, near the stage to monitor dancer's conduct, specifically to ensure that dancers do not take customers to the vestibule area. (Tr. 12/4/02 at 18-19, 65-66.)

21. Mr. Gerard Adkins goes outside of the establishment approximately four (4) to five (5) times during his shift onto Georgia Avenue, N.W., to check "whether girls are in cars with customers", "throwing bottles on the neighbor's lawns", and for "drug selling." (Tr. 12/4/02 at 22-25, 32-33.) He noted that the establishment has a policy that after work the dancers are required to leave the vicinity of the establishment. (Tr. 12/4/02 at 23-24, 67-68.)

22. Mr. Adkins stated that he was on duty on May 31, 2002 but did not observe any violations. (Tr. 12/4/02 at 28.) He noted that when the establishment is busy it is difficult for him to watch what is occurring inside of the establishment. (Tr. 12/4/02 at 64.) Mr. Adkins was on duty on April 26, 2002 and several times dancers were fined for the evening, including a dancer named "Dynamite" who he caught with a patron in the vestibule area with a camera. (Tr. 12/4/02 at 29.) The dancer, "Dynamite", was terminated for the same violations as "Reds" and "Dallas", including going into the vestibule area with customers. (Tr. 12/4/02 at 30.) The establishment has one (1) doorman whose duties include checking identification, monitoring the establishment, and providing security. (Tr. 12/4/02 at 34-35, 37-38.)

23. Officer Edward A. Miller, MPD, is a Patrol Officer with the Fourth District. (Tr. 12/4/02 at 92-94.) The establishment is located in the Fourth District with the Fourth District MPD station located approximately seven (7) blocks away from the establishment. (Tr. 12/4/02 at 93-94, 100, 107.)

24. With respect to the establishment's operations, Officer Miller stated that he tries to stop by the establishment once a day after closing because "sometimes stuff gets out of hand." (Tr. 12/4/02 at 95.) Specifically, Officer Miller noted that robberies sometimes occur as people exit the establishment and that an MPD presence lowers the threat level. (Tr. 12/4/02 at 104.) Officer Miller stated that the establishment has a nice working relationship with MPD's Fourth District. (Tr. 12/4/02 at 97.) Officer Miller noted that police officers stop through the establishment from time to time. (Tr. 12/4/02 at 98-99.) Officer Miller testified that the level of security in the establishment is pretty sound and that they employ "enough people to handle situations." (Tr. 12/4/02 at 98.)

25. With respect to the dancer's conduct, Officer Miller has observed the dancers shaking hands with customers and observed patrons touching and tipping the dancers by placing money in their garter belt or throwing money on stage. (Tr. 12/4/02 at 112-114.) He stated that as to whether the dancers simulated sexual intercourse, it depended on the perspective of the observer whether the dancer's conduct constituted simulated sexual activity. (Tr. 12/4/02 at 114.)

26. With respect to criminal activity, Officer Miller has not observed prostitution or criminal activity at the establishment. (Tr. 12/4/02 at 99.) He testified that in his professional opinion the establishment is not a problem and that he is not aware of a pattern of criminal activity connected to the establishment. (Tr. 12/4/02 at 101-102.) Officer Miller noted that there is an "open air drug market" on Jefferson Street, near the establishment but that it was not related to the establishment. (Tr. 12/4/02 at 102.)

CONCLUSIONS OF LAW

27. 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 or Title 23 of the DCMR pursuant to D.C. Official Code § 25-823(1) (2001). In this instance, the Board finds that the Respondent's violation of 23 DCMR § 904.3 (1997) warrants a fifteen (15) day

suspension with seven (7) consecutive days to be served before February 15, 2005 and eight (8) days stayed for one (1) year from the date of this Order. The Board also finds that requiring the Respondent to provide the Board with a security plan will assist the establishment in preventing future ABC violations by its dancers and patrons from occurring. Specifically, the Board is requiring the Respondent to submit a security plan within thirty (30) days of the date of this Order that includes details regarding the following: (1) the maintenance and monitoring of a security camera in the establishment's enclosed vestibule area; (2) restricting patron access to the enclosed vestibule area; (3) the maintenance of a police log detailing all calls made to MPD reflecting the date, time, and nature of service requested; (4) the monitoring of the interior of the establishment for possible ABC violations by the establishment's dancers and patrons; and, (5) the maintenance of an incident log detailing violations committed by the establishment's dancers. Furthermore, the Board believes that not permitting patrons to have access to the establishment's enclosed vestibule area will significantly reduce or eliminate the illegal private dancing that was occurring in this area between the establishment's dancers and patrons. Additionally, the Board is requiring that the oral changes made by Mr. Gerard Adkins to the establishment's written rules concerning dancer conduct, including the establishment's revised fine policy for violations committed by dancers, be submitted to the Board within thirty (30) days of this Order. Finally, the Board finds that requiring the Respondent to post a legible sign or banner in a conspicuous area on each stage of the licensed premises that states: "Do not touch the dancers" on both stages can only help to prevent patrons from touching the establishment's dancers. The Board notes that it possesses the authority to place these conditions on the establishment pursuant to D.C. Official Code § 25-447(f) (2001).

28. With regard to Charge I, the Board must determine whether the Respondent allowed entertainers, employees or customers to perform or simulate the performance of acts of oral, anal, or vaginal sexual intercourse, masturbation, flagellation, or bestiality, or to fondle in an erotic manner the breasts, buttocks, anus, or genitals of another person on the licensed premises, in violation of 23 DCMR § 904.3 (1997). In this case, the testimony of Investigator Lumukanda and Investigator Stokes revealed that the Respondent did permit violations of 23 DCMR § 904.3 (1997) on February 1, 2002, April 26, 2002, and May 31, 2002, as described in the Notice to Show Cause, dated June 21, 2002, to occur on the licensed premises. Specifically, the testimony of Investigator Lumukanda revealed that on April 26, 2002, he observed on several occasions, a dancer clothed in an "American print bikini" who would lead a patron into an enclosed area for a private dance and allow him to fondle the dancer's breasts, buttocks, and genital area in an erotic manner and noted that they were "grinding and caressing" in a manner that exceeded a mere touch. In finding that the Respondent permitted this activity, the Board would note that: (1) the dancer in the "American print bikini" was provided change by the establishment's bartender -- just like the rest of the establishment's dancers after completing her private dances; and (2) the private dancing occurred on several occasions and was visible to Investigator Lumukanda from the first floor of the establishment. Additionally, the testimony of Investigator Stokes revealed that on February 1, 2002, he observed a dancer, with the stage name "Silhouette", who was receiving tips from male patrons while she was on stage with her legs open and vagina exposed and that patrons

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would "rub between [the dancer's] legs" and touch her vagina as they put money into her garter belt. Finally, the testimony of Investigator Stokes revealed that on May 31, 2002, he observed dancers with the stage names of "Reds" and "Shiver" performing a grinding motion using their buttocks on the patrons' crotch area seated around the stage while receiving a tip. Additionally, on May 31, 2002 he observed the dancer, with the stage name "Reds", take her breasts and rub them in the face of patrons, including in the enclosed area, while receiving tips. Furthermore, he observed "Reds" give four (4) or five (5) "lap dances" in the enclosed area with the patron's genital area pressed against the buttocks of the dancer, with both moving in an erotic manner. It is worth noting that the testimony of Investigator Stokes revealed that during his visits employees of the establishment did nothing to prevent patrons from touching the dancers and that lap dancing appeared to be a regular way of doing business at the establishment with waitresses walking by the enclosed area where dancers were performing. Additionally, the testimony of James and Gerard Adkins also revealed that violations of 23 DCMR § 904.3 (1997) had taken place between the establishment's dancers and patrons on the licensed premises. Based upon the above, the Board finds that the Respondent permitted violations of 23 DCMR § 904.3 (1997) to occur at the licensed premises on February 1, 2002, April 26, 2002, and May 31, 2002.

29. In finding violations of 23 DCMR § 904.3 (1997) to have occurred, including the "fondling in an erotic manner" of the breasts, buttocks, anus, or genitals on February 1, 2002, April 26, 2002, and May 31, 2002, between the establishment's dancers and patrons, based upon the testimony set forth above, it is worth noting that the enumerated prohibited activities set forth in 23 DCMR § 904.3 (1997) mirror the definition of "specified sexual activities" established in the District of Columbia Zoning Regulations, which characterize the activities of a sexually oriented business establishment. Specifically, Zoning regulation Title 11 DCMR § 199.1 defines specified sexual activities as "[a]cts of human masturbation, sexual intercourse, sexual stimulation or arousal, sodomy, or bestiality ... [f]ondling or other erotic touching of human genitals, pubic region, buttock, or breast." Given this statutory scheme, the Board of Zoning Adjustment's ("BZA") analysis of particular conduct, which rises to the level of "specified sexual activities," provides guidance for the Board in determining whether similar such conduct violates 23 DCMR § 904.3 (1997). As such, the BZA case In re California Steak House, BZA Appeal No. 13967, decided on November 22, 1983, provides the Board with guidance on the issue of whether the conduct at issue in this case violates 23 DCMR § 904.3 (1997). In California Steak House, the BZA held that the conduct of dancers involving "sexual stimulation or arousal" should be construed as "specified sexual activities" in that the activities "clearly go beyond dancing in the nude." Such activities were described as follows:

[W]omen [in the sexually oriented business establishment], while nude, engaged in dancing and other bodily movements on tables in close proximity to the customers. In the course of dancing, these women would lay on the tables with their legs spread apart ... Customers would place

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money on the tables and the women would turn their backs to the customers, bend over in a manner exposing the anus and vagina to the customers and pick up the money ... In addition to the activities engaged in while dancing, each woman, while nude, would walk on the table in a gliding or "sashaying" fashion from customer to customer. Id. at 7.

In this case, the incidents observed by Investigator Lumukanda on April 26, 2002 and by Investigator Stokes on February 1, 2002 and May 31, 2002, as described above, clearly consist of conduct that is more overtly sexual than the dancers' conduct in California Steak House. For example, the testimony of Investigators Lumukanda and Investigator Stokes revealed that the Respondent's dancers engaged in "lap dancing" and permitted patrons of the establishment to fondle the dancer's breasts, genital region, and buttocks while stimulating the patron's genitals with their buttocks. Additionally, the testimony of Investigator Stokes revealed that Respondent's dancers also permitted patrons of the establishment to fondle their breasts and buttocks while circulating among the patrons for the purpose of collecting tips. Furthermore, the testimony of Investigator Stokes revealed that on February 1, 2002, one of the Respondent's dancers would lay on their back on stage with their legs open such that their vagina was exposed, stimulate their own vagina in plain view, and permit male patrons to fondle their vagina. The Board finds that such conduct, as described above, is "specified sexual activity" that constitutes a violation of 23 DCMR § 904.3 (1997), including "fondling in an erotic manner", within the meaning of this provision.

30. In making its decision to suspend and place conditions on the Respondent's license, rather than revoke the Respondent's license, the Board took into account the efforts made by the Respondent, as described in the testimony of James Adkins and Gerard Adkins, to address ABC violations committed by its dancers and patrons. Specifically, the testimony of Gerard Adkins revealed that after the November 13, 2002 show cause hearing, the establishment installed a camera to view the vestibule area to help ensure that dancers do not take patrons to this area. Additionally, the testimony of James and Gerard Adkins revealed that the establishment does possess rules and regulations that dancers are required to sign a contract to obey and has fined several of its dancers for committing violations.

ORDER

THEREFORE, it is hereby **ORDERED** on this 5th day of January 2005, that the Retailer's Class "CN" license held by Jefferson Grill, Inc., t/a Macombo Lounge, 5335 Georgia Avenue, N.W., Washington, D.C., be **SUSPENDED** for a period of fifteen (15) days, with seven (7) consecutive days served before February 13, 2005 and eight (8) days stayed for one (1) year from the date of this Order.

It is **FURTHER ORDERED** that the Respondent shall operate its establishment with the following conditions imposed on its Retailer's Class "CN" license:

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1. Respondent must provide the Board with a security plan within thirty (30) days of the date of this Order that includes details regarding the following:
 - (a) The maintenance and monitoring of a security camera in the establishment's enclosed vestibule area;
 - (b) Restricting patron access to the enclosed vestibule area;
 - (c) The maintenance of a police log detailing all calls made to MPD reflecting the date, time, and nature of service requested;
 - (d) The monitoring of the interior of the establishment for possible ABC violations by the establishment's dancers and patrons; and
 - (e) The maintenance of an incident log detailing violations committed by the establishment's dancers;
2. Respondent must submit to the Board revised written rules concerning dancer conduct, which shall include the establishment's revised fine policy for violations committed by dancers, within thirty (30) days of this Order;
3. Respondent shall not permit patrons to have access to the establishment's enclosed vestibule area; and
4. Respondent must post a legible sign or banner in a conspicuous area on each stage of the licensed premises that states: "Do not touch the dancers".

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Jefferson Grill, Inc.
t/a Macombo Lounge
January 5, 2005

District of Columbia
Alcoholic Beverage Control Board

Charles A. Burger, Chairperson

Vera M. Abbott, Member

Audrey E. Thompson, Member

Judy A. Moy, Member

Peter B. Feather, Member

Albert G. Lauber, Member

Eartha Isaac, 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, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

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).