

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

In the Matter of:)	
)	
Giron and Martinez, Inc.)	
t/a Acuario)	
)	
Application for Substantial Change)	
to Retailer's Class CR License)	License No. 74502
)	Order No. 2010-317
at premises)	
3410 11 th Street, N.W.)	
Washington, D.C. 20010)	
)	

Giron and Martinez, Inc., t/a Acuario, Applicant

Cliff Valenti, Chairperson, Advisory Neighborhood Commission (ANC) 1A

Tim Turner, on behalf of a Group of Five or More Individuals ("Group of Five")

BEFORE: Charles Brodsky, Chairperson
Mital M. Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWAL OF PROTEST

The official records of the Alcoholic Control Board (Board) reflect that Giron and Martinez, Inc., t/a Acuario, Applicant for a Substantial Change to a Retailer's Class CR license located at 3410 11th Street, N.W., Washington D.C., and ANC 1A have entered into a Voluntary Agreement ("Agreement"), dated December 14, 2009, setting forth the terms and conditions that govern the operation of the Applicant's establishment. This Agreement constitutes a withdrawal of the Protest of this Application by ANC 1A. The Group of Five remains a Protestant.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Commissioner Betty Pair are signatories to the Agreement.

Giron and Martinez, Inc.
t/a Acuario
License No. 74502
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Accordingly, it is this 7th day of April 2010, **ORDERED** that:

1. The Application filed by Giron and Martinez, Inc., t/a Acuario, for a Substantial Change to its Retailer's Class CR license located at 3410 11th Street, N.W., Washington, D.C., is **GRANTED**;

2. The Protest of ANC 1A in this matter is hereby **WITHDRAWN**;

3. This above-referenced Voluntary Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order; and

4. Copies of this Order shall be sent to the Applicant, ANC 1A, and the Group of Five.

Giron and Martinez, Inc.
t/a Acuario
License No. 74502
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District of Columbia
Alcoholic Beverage Control Board

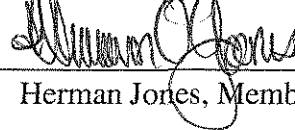
Mital M. Gandhi, Member



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member

I dissent from the position taken by the majority of the Board.



Charles Brodsky, Chairperson

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., 3rd Floor, Washington, D.C. 20009.



ADVISORY NEIGHBORHOOD COMMISSION 1A

ANC 1A01 - Lisa Kralovic
ANC 1A02 - Calvin Woodland
ANC 1A03 - Luis Morales
ANC 1A04 - Betty Pair
ANC 1A05 - William Jordan

ANC 1A06 - Samuel Johnson
ANC 1A07 - James Simcox
ANC 1A08 - Cliff Valenti
ANC 1A09 - LaKeisha Thomas
ANC 1A10 - Lenwood Johnson
ANC 1A11 - Sandra Scotland

VOLUNTARY AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of December 2009, by and between Giron and Martinez, Inc., T/A Acuario, License Number 74502, License Class "C", located at 3410 – 3412 Eleventh Street, NW, Washington, DC 20010 (hereinafter the "Applicant") and the Advisory Neighborhood Commission 1A, on behalf of the community of Single Member District 1A-06 (hereinafter the "Protestant").

WHEREAS, Applicant having filed an application with the District of Columbia Alcohol Beverage Control Board (hereinafter the "ABC Board") for issuance of a modification to its class "C" license for the premises of 3410 – 3412 Eleventh Street, NW, Washington, DC 20010, which application is before the ABC Board in case number 09-CMP-00745.

WHEREAS, Protestant having timely filed before the ABC Board a protest opposing the granting of the referenced application; and

WHEREAS, in recognition of the ABC Board's policy of encouraging parties to a protested proceeding to settle their differences by negotiating agreements, the parties hereto being desirous of entering into an agreement whereby, subject to approval of the ABC Board, Applicant will adopt certain measures to address Protestant's concerns, and Protestant will agree to the modification of the ABC License and withdraw its protest.

NOW THEREFORE, in consideration of the mutual covenants and undertakings memorialized herein, the parties agree as follows:

- 1. Noise Suppression:** There shall be no loud music performed in the establishment. Sound emanating from any part of the establishment shall not be audible in residential structures in the vicinity or on the sidewalks across the street from and adjacent to the restaurant on Park Road and 11th Street. The Applicant's operation shall be at all times in compliance with the DC Noise Control Act. Applicant will encourage, to the best of its ability, employees and patrons, by posted signs or other printed notation (easily visible to the naked eye on both the exterior and interior of the premises), to be considerate of residents in the neighborhood after departing the premises, by keeping conversations and other noises at a level that will not disturb the *peace, order, quiet and tranquility* of residents in the enjoyment of their homes or generate a noise complaint, and to respect the property of the residents by not urinating or trespassing upon the same. All due diligence will be made by the Applicant to ensure there is no loitering in front of or in the vicinity of the establishment, especially loud cursing, public drunkenness, fighting or other acts of aggression.
- 2. Hours of Operation:** Applicant may open its doors to receive patrons from 10:00 a.m. to 2:00 a.m. Monday through Thursday, Friday and Saturday from 10:00 a.m. to 3:00 a.m., and Sunday from 10:00 a.m. to 2:00 a.m. Last call will be one hour before closing times. Karaoke (live

entertainment) will be allowed on **Friday and Saturday only** from 8:00 p.m. until 1:00 a.m. with no employees of the establishment allowed to participate in said karaoke at any time. Alcoholic beverages may not be carried out of the establishment. Food service will be available at all times during the hours of operation. No other forms of entertainment such as dancing, lewd behavior or inappropriate activities will be allowed at any time. Curtains in the front windows will remain open at all times during the hours of operation. Applicant agrees to close down karaoke promptly at 1:00 a.m. and have no after-hours entertainment.

3. **Trash Removal:** Applicant will maintain regular trash/garbage removal service. Trash/garbage shall be removed from the trash and dumpster area, which shall be kept clean at all times, at a minimum of 4 times per week (days for removal to be decided by Applicant and business necessity). Trash trucks shall not come before 9:00 a.m. on weekdays and 10:00 a.m. on weekends. Applicant will empty bottles by noontime each day and not empty trash after 6:00 in the evening. Applicant shall *enclose* the dumpsters and keep dumpster lids tightly closed so that rodents cannot enter them and odors are better controlled. Applicant will conduct regular rodent and pest (insect) abatement. The property currently used by Applicant for its dumpsters is not part and parcel of Applicant's premises. Applicant agrees to keep area used to store dumpsters clean at all times and will promptly notify the proper DC department of any items illegally dumped and request removal of said items.
4. **Removal of Grease and Oils:** Applicant will provide for the proper removal of grease and oils and will not deposit these substances in dumpster.
5. **Litter and Debris Removal:** Applicant will maintain free of trash and litter the public space and streets to a minimum of 18 feet from the curb, adjacent to the front of the premises along 11th Street, in compliance with applicable DC regulations in this respect and as often as needed, but at least twice daily.
6. **Food Service to Liquor Ratio:** Applicant will comply in all respects with the requirements of its license or other requirements of the law, including maintaining the appropriate ratio between food service and liquor sales (45 percent liquor sales and 55 percent food sales, or that ratio mandated by District regulations pursuant to its class "C" license). Applicant shall refuse to sell alcohol or cigarettes to legally underage persons and *refuse* to sell alcohol to inebriated [drunk] persons.
7. **Ingress and Egress:** No patron shall be allowed ingress or egress at any location except at the designated building's entrances for restaurant patronage except where this event may occur at the designated emergency exits.
8. **Public Space/Private Property Usage:** No tables or structures shall be placed outside the building without proper licensing and notification. Applicant shall reconstruct, according to proper building codes in effect, structure it has erected at rear of premises.
9. **Employment Practices:** Applicant will make its best effort to recruit, hire and maintain employees from the Columbia Heights neighborhood and adjacent areas.

10. Right to Protest: The parties agree that if reasonable discussions of violations are not resolved, then any failure of Applicant to adhere to foregoing commitments would constitute a breach of this agreement and provide grounds for the Protestant to petition the ABC Board for issuance of an Order to Show Cause, as provided by DC regulations.

IN WITNESS WHEREOF, the parties place their signatures to this agreement, this 14th day of December 2009.

 
Giron & Martinez, Inc. T/A Acuario Betty Pair for ANC 1A

BY: _____



ADVISORY NEIGHBORHOOD COMMISSION 1A

*ABMA
12/22/09*

ANC 1A01 - Lisa Kralovic
ANC 1A02 - Calvin Woodland
ANC 1A03 - Luis Morales
ANC 1A04 - Betty Pair
ANC 1A05 - William Jordan

ANC 1A06 - Samuel Johnson
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15 December 2009

Mr. Nicholas Alberti, Chair
Alcoholic Beverage Control Board
Alcoholic Beverage Regulation Administration
941 North Capitol Street, NE
Suite 7200
Washington, DC 2002

RE: License Nr. 74502/Case Nr. 09-CMP-00745/Giron & Martinez, Inc., T/A Acuario

Dear Mr. Alberti:

Enclosed is the Voluntary Agreement ANC 1A has negotiated with the referenced establishment and its principals. ANC 1A hereby formally withdraws the protest it had in the case and requests that this Voluntary Agreement be recorded with the license.

Please call me if you have any questions about this Voluntary Agreement. I was assisted in the negotiation by Mr. George Escobar, Deputy Director of OLA, who acted as our translator.

Sincerely,

Betty Pair
Commissioner 1A 04

BP/tbm
Enclosure

Cc: Cliff Valenti, Chair ANC 1A
File