

1 VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD

2 RICHMOND

3  
4 IN THE MATTER OF 202 MSC, LLC  
202 MARKET  
5 202 MARKET STREET SE  
ROANOKE, VIRGINIA 24001-1802

6 LICENSE NO. 045236 - MIXED BEVERAGE RESTAURANT

7 INCIDENT NO. 201102180047

8  
9 HEARING HELD At Roanoke, Virginia,  
August 17, 2011

10 ADMINISTRATIVE  
11 HEARING OFFICER ELIZABETH A. FLOURNOY

12  
13 APPEARANCES FOR THE BOARD:

14 A. Baker Goodman, Special Agent

15 FOR THE LICENSEE:

16 Anthony F. Anderson, Esq.  
17 Anderson & Friedman  
Attorneys at Law  
18 P.O. Box 1525  
Roanoke, Virginia 24007

19 Zachary Stephen Rosenoff, Controller

20 Dick Daniels, Radio Personality and Emcee

21 Nathan Harper, President, Square Society

22  
23 Cite As:

24 *IN RE: 202 MSC, LLC, #045236 (09/12/2011)*

25 Reported by  
Donna L. Tuten, CCR, CMRS

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**C O M P L A I N T**

**(Mixed Beverage Restaurant)**

**Incident No. 201102180047**

1. On February 4, 2011 at approximately 10:10 p.m., the licensee allowed a striptease act, or the like, on the licensed premises, in violation of Sections 4.1-325 A.12. and 4.1-226 2. of the Code of Virginia.

1 **FINDINGS OF FACT:**

2 1. The hearing in this matter was convened in order to  
3 consider the charge set forth in the Notice of Informal  
4 Conference/Hearing Before Hearing Officer, License No. 045236 -  
5 Mixed Beverage Restaurant - Incident No. 201102180047. An  
6 informal conference, for which all parties and counsel were  
7 present, was held prior to commencement of the formal hearing,  
8 during which appearance information was obtained and hearing  
9 procedures were discussed. After commencement of the hearing,  
10 the license file was made a part of the record.

11 2. As to the charge, Special Agent A. Baker Goodman  
12 stated that on or about February 5 or 6, 2011, ABC Bureau of Law  
13 Enforcement was informed about an incident that occurred on the  
14 evening of February 4, 2011, at the licensed premises of 202  
15 Market in the City of Roanoke. He was informed that a local  
16 man, River Laker, performed a striptease at the establishment  
17 and that the incident had been recorded on a camera phone and  
18 posted online on YouTube.com.

19 3. Information provided by the licensee's controller,  
20 Zachary Stephen Rosenoff, revealed that the occasion was a  
21 fundraiser, a bachelor and bachelorette auction sponsored by a  
22 local nonprofit organization, The Square Society. This  
23 organization raises money to promote cultural activity and  
24 related endeavors in Roanoke's Center in the Square. The  
25 organization had secured the services of two local radio

1 personalities, Dick Daniels and Dave Page, who had volunteered  
2 their time, as hosts and masters of ceremonies (emcees) for the  
3 event.

4       4. Agent Goodman initially reviewed the audio/video  
5 recording of the event on YouTube, noting the sequence of events  
6 and the time which elapsed during the various steps of Mr.  
7 Laker's disrobing, as well as the various activities of the  
8 emcees and others in the establishment which were captured on  
9 the recording. The recording was evidently made at the behest  
10 of Mr. Laker, because it begins as Mr. Laker prepares to take  
11 the stage and ends immediately after he was escorted from the  
12 stage. Agent Goodman had burned a copy of the recording onto a  
13 CD in advance of the hearing, and that copy was viewed by the  
14 hearing officer and other attendees at the hearing, without  
15 objection by the licensee's counsel. A true copy of the disk  
16 (Exhibit 3) was provided to the hearing officer by Special Agent  
17 Goodman shortly after the hearing, with the consent of the  
18 licensee's counsel.

19       5. Agent Goodman noted that the incident began at  
20 approximately 10:10 p.m. The recording opens with Mr. Laker  
21 speaking to a viewer, presumably the videographer, while  
22 inserting flower stalks through the vents in a bicycle helmet,  
23 with all stalks pulled into a downward direction and secured so  
24 that the entire construction could be held in one's hand by the  
25 stalks. Mr. Laker states that the helmet construction is "for

1 my performance." When his name is called, Mr. Laker climbs a  
2 couple of steps to the stage carrying a towel and the flower-  
3 adorned bike helmet, which he lays on the floor. As the emcee  
4 reads biographical information about Mr. Laker, Mr. Laker begins  
5 moving his scarf back and forth across the back of his neck a  
6 couple of times before removing it. There followed his removal  
7 of the rest of his clothing, item by item, over a period of more  
8 than three minutes.

9 6. As he removed the articles of clothing, he placed them  
10 on the floor, near the towel and helmet. There was no pretense  
11 of dance or rhythmic movement by Mr. Laker; rather, he stood  
12 idly on stage when he was not actually removing articles of  
13 clothing. At one point, he requests music from the emcee, to  
14 which the emcee responds that no music is needed. During this  
15 time frame, the audience can be heard whooping, laughing and  
16 clapping. At the point in the performance when Mr. Laker  
17 removes his belt, leaving him standing in his t-shirt and  
18 slacks, approximately one minute and fifteen seconds has elapsed  
19 since he took the stage. At this point, the second emcee  
20 announces over the microphone, "If you take off any more, we'll  
21 lose our ABC license here, so settle down." Another 45 seconds  
22 elapse before he removes his t-shirt, after which the emcee made  
23 a remark about Mr. Laker's boxer shorts. Twenty-nine seconds  
24 later, he removes his pants, at which time the second emcee  
25 says, "We're getting ready to lose our license here." Just over

1 30 seconds later, Mr. Laker reached down and picked up the  
2 helmet adorned with flowers. He removed his boxer shorts while  
3 simultaneously covering his genital area with the helmet. At  
4 this point in the video, it is apparent that Mr. Laker is  
5 totally nude while standing on the stage area of the  
6 establishment, having removed all of his clothing. He stands on  
7 the stage for just over fifteen seconds before a man with a  
8 sports coat appears on stage and covers Laker with the coat,  
9 then escorts him from the stage.

10 7. The recording plainly shows waitstaff within yards of  
11 the platform on which Mr. Laker was standing during significant  
12 periods of time during the performance, although it does not  
13 appear that they were looking in the direction of the stage  
14 area. The two emcees engaged by the sponsoring charity for the  
15 event were also close by, with Dick Daniels (Emcee 1) on the  
16 stage and Dave Page (Emcee 2) at the bottom of the stairs just  
17 offstage. Also visible is a gentleman holding a pen or pencil  
18 and a pad or piece of paper. It appears that he might be  
19 recording bids for the organization, although his role in the  
20 proceedings is not in evidence.

21 8. Zachary Stephen Rosenoff testified for the licensed  
22 corporation. At the time of the incident, he was working as the  
23 general manager and as the controller of the corporation, though  
24 by the time of the hearing, another general manager had been  
25 hired and Mr. Rosenoff was working as the controller only. The

1 occasion on February 4, 2011 was a fundraiser, a bachelor and  
2 bachelorette auction sponsored by a local nonprofit  
3 organization, The Square Society. This organization raises  
4 money to promote cultural activity and related endeavors in  
5 Roanoke's Center in the Square. The licensed establishment had  
6 agreed to let the charitable organization use their facilities  
7 and their equipment for the event free of charge. The  
8 organization had secured the services of two local radio  
9 personalities, Dick Daniels and Dave Page, who had volunteered  
10 their time, as hosts and masters of ceremonies (emcees) for the  
11 event.

12 9. Mr. Rosenoff estimated that there were between 100 and  
13 150 people in the restaurant that night, resulting in quite a  
14 bit of noise in the establishment, which encompasses  
15 approximately 3,000 square feet. He stated that he never  
16 thought that anyone would remove their clothes at such an event.  
17 He was engaged in various activities during the event, and at  
18 the time the incident occurred, he was standing just inside the  
19 front door to the left of a disc jockey stand. He believes that  
20 one of the hostesses was asking him a question at the time the  
21 incident happened. He was told of the incident soon after it  
22 occurred by an employee, and he gave instructions to tally Mr.  
23 Laker's bar tab, have him pay it, then escort him from the  
24 premises. Mr. Rosenoff subsequently banned him from the  
25 premises in an interview with a local television reporter.

1           10. Dick Daniels stated that he served as an emcee for the  
2 event. He had cohosted the annual charity event in previous  
3 years, at other venues. This was the first time the event was  
4 held at 202 Market. Mr. Laker was not known to him prior to  
5 that night. He did speak to Mr. Laker for approximately 20 to  
6 30 seconds immediately before Laker went on stage and had no  
7 inkling that anything such as what occurred was in the offing.  
8 After the incident, he wrote a letter to Dr. Steve Rosenhoff  
9 (sic), member of 202 Market, expressing his regret about the  
10 incident and stating that, in past years, bachelors had  
11 sometimes removed their shirts, but nothing similar to the  
12 incident of February 4 had ever happened in the past. The  
13 letter, made a part of the record as Exhibit 1, details his  
14 impressions of the events of that night and his interpretation  
15 of Mr. Laker's conduct.

16           11. Nathan Harper, president of The Square Society,  
17 appeared as a witness on behalf of 202 Market. A letter from  
18 Mr. Harper in his capacity as Square Society President, dated  
19 February 23, 2011 and addressed to the Virginia Department of  
20 Alcoholic Beverage Control, was admitted into the record as  
21 Exhibit 2. The letter disavows any prior knowledge of Mr.  
22 Laker's actions and states, among other things, that they do not  
23 condone, promote or support his actions. Mr. Harper was present  
24 on February 4, 2011, when the incident occurred, although  
25 another member of the Society organized the event. Mr. Harper



1 was moving around the room during the event. He was a distance  
2 away when he saw that Mr. Laker had removed his clothes. He  
3 immediately went over to the stage, wrapped his coat around Mr.  
4 Laker and escorted him off the stage.

5 12. The licensee is a restaurant located in the City of  
6 Roanoke, Virginia. Wine and Beer On- and Off-Premises and Mixed  
7 Beverage Restaurant licenses were issued on April 6, 2007.  
8 There are no Board Orders and no written warnings paralleling  
9 the charges in this case.

10  
11 **CONCLUSIONS:**

12 The following charge against the Mixed Beverage Restaurant  
13 license is SUBSTANTIATED:

14 On February 4, 2011 at approximately 10:10 p.m., the  
15 licensee allowed a striptease act, or the like, on the  
16 licensed premises, in violation of Sections 4.1-325 A.12.  
and 4.1-226 2. of the Code of Virginia.

17 It is provided in Code Section 4.1-325 A.12. that no mixed  
18 beverage licensee nor any agent or employee of such licensee  
19 shall allow any striptease act on the licensed premises.  
20 Additionally, the provisions of Code Section 4.1-226 2. make  
21 suspension or revocation mandatory if the Board finds that:  
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23 In the licensed establishment of a mixed beverage  
24 licensee there (i) is entertainment of an obscene  
25 nature, entertainment commonly called stripteasing,  
topless entertaining, or entertainment that has  
employees who are not clad both above and below the  
waist (emphasis added).

1 Two general questions must be answered in determining  
2 whether there has been a violation of the statute in this  
3 instance. The first is whether the conduct at issue,  
4 specifically, River Laker's conduct while on the stage,  
5 constituted a "striptease act." If the answer to that question  
6 is affirmative, then the second question is presented: did the  
7 licensee, or any agent or employee of the licensee, **allow** the  
8 striptease act?  
9

10 In the Hearing Officer's view, the activity performed by  
11 Mr. Laker meets the definition of strip-teasing, which is defined  
12 as follows:

13 A performance, as in a burlesque act, in which a  
14 person slowly removes clothing, usually to musical  
15 accompaniment.<sup>1</sup>

16 The uncontroverted evidence in this case demonstrates that  
17 on the date and time alleged, River Laker disrobed completely,  
18 in what he characterized beforehand as "my performance." The  
19 video of the incident, apparently taken by an individual at Mr.  
20 Laker's behest, speaks for itself in terms of the actions of Mr.  
21 Laker. Mr. Laker removed his clothing, item by item, over a  
22 period of several minutes. At one point, he requests music of  
23 the emcee, to which the emcee responds that no music is needed.  
24 Although there was no dance, enticing or rhythmic movements of

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25 <sup>1</sup> See Merriam-Webster's Collegiate Dictionary, 11<sup>th</sup> Edition (Merriam-Webster, Incorporated, 2003) p. 1237.

1 any kind by Mr. Laker, the hearing officer is of the opinion  
2 that, lackluster though his actions may have appeared, they  
3 still amounted to a striptease. Support for this conclusion  
4 lies in the fact that the audience can be heard whooping,  
5 laughing and clapping, and one member of the audience places a  
6 folded bill of currency into Mr. Laker's right pocket.

7       Having found that the conduct that occurred in the  
8 establishment amounted to a striptease, the second question to  
9 be resolved is whether the licensee, or any agent or employee of  
10 such licensee, **allowed** the prohibited striptease to take place.

11       "Allow" is defined as follows:

12               5a: PERMIT ... b: to forbear or neglect to restrain or  
13               prevent.<sup>2</sup>

14       Mr. Laker disrobed completely, one piece of clothing at a  
15 time, over a period of approximately three minutes, then stood  
16 naked, concealing his privates from view of the audience with  
17 the helmet-bouquet. The video reflects that one emcee referred  
18 to Mr. Laker's continuing actions on stage on two occasions by  
19 specific reference to loss of the establishment's ABC license.  
20 The last of these remarks was made thirty seconds before Mr.  
21 Laker removed the last article of clothing, his boxer shorts.  
22 These remarks should have alerted some employee or manager of  
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25 <sup>2</sup> Ibid., p. 32.

1 the establishment that something was amiss. The video plainly  
2 shows that there was waitstaff within a few yards of the  
3 platform on which Mr. Laker was disrobing during most of the  
4 time Mr. Laker was onstage. No one intervened and, in fact, it  
5 was an officer of the Square Society, not a manager or employee  
6 of the establishment, who, some twenty seconds after Mr. Laker  
7 had removed all of his clothes, mounted the stage with a coat in  
8 his hands, which he wrapped around Mr. Laker's nude torso as he  
9 ushered him off the stage.

10  
11 In the hearing officer's opinion, the licensee failed to  
12 take appropriate action to prevent Mr. Laker from performing a  
13 striptease on February 4, 2011. Mr. Laker mounted the stage  
14 with a bath towel in hand, stood and removed item after item of  
15 clothing over a period of several minutes, requesting music at  
16 one point. People were clapping and yelling encouragement, and  
17 one member of the audience placed a bill in the pocket of Mr.  
18 Laker's pants, in clear mimicry of "stripjoint" conduct. The  
19 emcee made more than one remark referencing the events that were  
20 occurring. What may have been initially unforeseeable became  
21 foreseeable as Mr. Laker moved inexorably toward nudity, had  
22 anyone in management been paying attention. It is the duty of  
23 the management of an establishment licensed by ABC to monitor  
24 activities and conduct occurring within the establishment to  
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1 ensure compliance with all applicable rules and regulations, and  
2 that duty was not satisfied in this instance.

3         The hearing officer is aware that the licensee was engaged  
4 in supporting a worthwhile cause when Mr. Laker, for his own  
5 reasons, took the actions that resulted in this charge.  
6 Further, the hearing officer recognizes that the violation at  
7 issue here is one of omission, rather than a premeditated,  
8 flagrant violation of the rules and regulations of ABC. These  
9 circumstances have been considered in mitigation in assessing an  
10 appropriate penalty. Finally, it is noted that suspension or  
11 revocation of the license is mandatory when stripteasing has  
12 occurred upon the licensed premises of a mixed beverage  
13 licensee.  
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15         Accordingly, the following DECISION is entered.  
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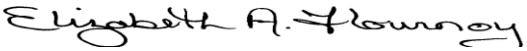
17 **DECISION:**

18                                   **(Mixed Beverage Restaurant)**

19         That the privileges of purchasing and selling mixed  
20 beverages granted by the license be suspended for ten (10) days;  
21 provided, however, that upon payment of a civil penalty of one  
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1 thousand dollars (\$1,000), the suspension will end after three  
2 (3) days.

3  
4 Entered this 12<sup>th</sup> day of September 2011.

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8 Elizabeth A. Flourney  
9 Administrative Hearing Officer  
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