

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND**

334 South Water LLC d/b/a Mile & A Quarter, Appellant,	:	
	:	
v.	:	DBR No.: 17LQ006
	:	
City of Providence, Board of Licenses, Appellee.	:	
	:	

DECISION

I. INTRODUCTION

This matter arose from an appeal filed by 334 South Water LLC d/b/a Mile & A Quarter (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 and R.I. Gen. Laws § 3-2-2 regarding a decision taken by the City of Providence, Board of Licenses (“Board”) on April 17, 2017 revoking the Appellant’s Class BVX liquor license (“License”) and imposing an administrative penalty of \$2,000. A hearing was held on May 1, 2017 before the undersigned¹ with the parties resting on the record.² The parties were represented by counsel.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-2, R.I. Gen. Laws § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

¹ Pursuant to a delegation of authority by the Director of the Department.

² The Department transcript was received on May 3, 2017.

III. ISSUES

Whether there was disorderly conduct pursuant to R.I. Gen. Laws § 3-5-23 at the Appellant's on February 25, 2017 and if so, what sanction(s) should be imposed.

IV. MATERIAL FACTS AND TESTIMONY

The parties relied on the record from the Board regarding the February 25, 2017 incidence. Oral argument was made before the Department on May 1, 2017.

The parties did not dispute that a double shooting (no fatalities) happened at 2:15 a.m on February 25, 2017 on South Water Street in Providence near the Appellant. The Appellant provided the Board with video taken outside that shows the shooting. The Appellant did not provide video of its interior taken during that evening. See City's Exhibit Two (2) (video).

V. DISCUSSION

A. The Appeal before the Department

The hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984) and *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964). Thus, while there was not a new hearing before the Department, the proceeding before the Department is considered a *de novo* hearing. The outcome of an appeal is a decision whether to uphold, overturn, or modify a licensing board's decision. Therefore, this appeal is not bound by the Board's reasons for revocation but whether the Board presented its case for revocation before the undersigned. The undersigned will make her findings on the basis of the evidence before her and determine whether that evidence justifies said revocation.

The Department reviews sanctions to ensure statewide consistency and appropriateness in the situation. It also supports progressive discipline barring the rare and extreme event where revocation may be warranted without prior discipline. It also accepts the principles of comity and

deference to the local authorities and their desire to have control over their own town or city. At the same time, pursuant to R.I. Gen. Laws § 3-2-2 and R.I. Gen. Laws § 3-7-21, the Department ensures that tensions between local boards and licensees are settled in a consistent manner. Nonetheless, there is not a mechanical application of sanctions as each matter has its own sets of circumstances. See *C&L Lounge, Inc. d/b/a Gabby's Bar and Grille; Gabriel L. Lopes v. Town of North Providence*, LCA – NP-98-17 (4/30/99). At the same time, a sanction cannot be arbitrary and capricious. The unevenness of the application of a sanction does not render its application unwarranted in law but excessive variance would be evidence that an action was arbitrary and capricious. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation for a series on infractions). See *Jake and Ella's v. Department of Business Regulation*, 2002 WL 977812 (R.I. Super.) (R.I. Super.) (overturning a revocation of a liquor license as arbitrary and capricious).

An appeal proceeding held pursuant to R.I. Gen. Laws § 3-7-21 is considered a civil proceeding. See *Board of License Commissioners of Tiverton v. Pastore*, 463 A.2d 161 (R.I. 1983). See also *Scialo v. Smith*, 210 A.2d 595 (R.I. 1965). In civil proceedings, unless otherwise specified, the burden of proof generally needed for moving parties to prevail is a fair preponderance of the evidence. *Jackson Furniture Co. v Lieberman*, 14 A.2d 27 (R.I. 1940). See also *Parenti v. McConaghy*, 2006 WL 1314255 (R.I. Super.); and *Manny's Café, Inc. v. Tiverton Board of Commissioners*, LCA TI-97-16 (11/10/97) (Department decision discusses burden of proof for proceedings held pursuant to R.I. Gen. Laws § 3-7-21).

C. When Sanctions are Imposed

R.I. Gen. Laws § 3-5-23 states in part as follows:

(b) If any licensed person permits the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as

to annoy and disturb the persons inhabiting or residing in the neighborhood . . . he or she may be summoned before the board, body, or official which issued his or her license and before the department, when he or she and the witnesses for and against him or her may be heard. If it appears to the satisfaction of the board, body, or official hearing the charges that the licensee has violated any of the provisions of this title or has permitted any of the things listed in this section, then the board, body, or official may suspend or revoke the license or enter another order.

In imposing a sanction on a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. Rather, the Rhode Island Supreme Court held in *Cesaroni v. Smith*, 202 A.2d 292, 295-6 (R.I. 1964) as follows:

[T]he legislature, in enacting the pertinent provision of the statute, intended to impose upon such licensee the obligation to maintain an efficient and affirmative supervision over the conduct of his patrons in his place to such an extent as is necessary to maintain order therein. It is our opinion that as a practical matter a licensee assumes an obligation to affirmatively supervise the conduct of his patrons so as to preclude the generation therefrom of conditions in the neighborhood of like character to conditions that would result from maintenance of a nuisance therein.

It is to be conceded that this imposes upon a licensee an onerous burden in the management of the licensed premises. It is, however, within the authority of the legislature, the liquor traffic being peculiarly within the police power of the state.

Furthermore, the Court found that “disorderly” as contemplated in the statute meant as follows:

The word "disorderly" as used here contemplates conduct within premises where liquor is dispensed under a license that causes either directly or indirectly conditions in the neighborhood in annoyance of or disturbing to the residents thereof. *Id.* at 296.

In a denial of renewal matter,³ *A.J.C. Enterprises v. Pastore*, 473 A.2d 269, 275 (R.I. 1984) found in discussing the disorderly provisions that “[T]here need not be a direct causal link between incidents occurring outside or nearby a drinking establishment and its patrons. Such a

³ In order to suspend or revoke a liquor license, there must be a showing that the holder has breached some applicable rule or regulation. In this matter, the City is relying on the disorderly provisions of R.I. Gen. Laws § 3-5-23. R.I. Gen. Laws § 3-7-6 requires that a denial of a renewal must be “for cause.” For cause has been interpreted to include (among other reasons) the violations of the disorderly provisions. *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61 (R.I. 1971).

link is established when it can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within.”

A liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali v. Smith*, 254 A.2d 766 (R.I. 1969). It is not a defense that a licensee is not aware of the violations or provided supervision to try to prevent violation. While such a responsibility may be onerous, a licensee is subject to such a burden by the legislature and accepted such conditions by becoming licensed. Thus, a liquor licensee has the “responsibility to control the conduct of its patrons both within and without the premises in a manner so that the laws and regulations to which the license is subject will not be violated.” *Schillers, Inc. v. Pastore*, 419 A.2d 859, 859 (R.I. 1980). See also *Furtado v. Sarkas*, 118 R.I. 218 (1977).

From *Cesaroni* in 1964 to *Schillers* in 1980 up until today, a liquor licensee is responsible for activities inside and outside its licensed premises. It does not matter how well a liquor licensee supervises such responsibilities since even the most responsible supervising licensee is still responsible for disorderly conduct. See *Therault*. Under *Cesaroni* and *A.J.C. Enterprises*, the Appellant is directly or indirectly responsible for the actions of its patrons and for the actions arising inside or emanating from inside a liquor licensee.

The Department has a long line of Department cases regarding progressive discipline and upholding the same. *Pakse Market Corp.* The progressive discipline imposed on a licensee depends on the violations and the circumstances of a licensee’s violation(s). The sanctions imposed for R.I. Gen. Laws § 3-5-23 vary depending on the type of disorderly conduct. Very serious and egregious violations that involve weapons and/or serious assaults could result in a revocation of license. E.g. *Cardio Enterprises d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (license revoked for murder that arose at bar). A long

suspension may be imposed for severe disorderly conduct. E.g. *C & L Lounge, Inc.* (30 day suspension for severe disorderly conduct but not so severe as to merit revocation).

D. Discussion

The issue in this matter turns on whether the shooting outside at 2:15 a.m., 15 minutes after the Appellant's closing, can be indirectly linked to actions inside the club.

The Appellant argued that this matter was akin to *D. Liakos d/b/a Van Gogh v. Providence Board of Licenses*, DBR No.: 16LQ011 (10/31/16). In that matter, the Board found that there had been no disturbance inside the club and thus, no inference could be made that the fighting that occurred outside after the patrons exited the club was somehow indirectly related to something that had happened in the club.

The Board argued that this matter was akin to the *CAG Productions, LP d/b/a Euphoria v. City of Providence, Board of Licenses*, DBR No.: 16LQ022 (4/3/17) where an inference was made that the pushing and shoving outside that culminated in the pepper spray was indirectly related to something happening inside the club upon exiting.

At the Board hearing, the Appellant represented that it no longer wanted to operate "the loft" part of its premises and just wanted to operate its restaurant, but wanted to maintain its 2:00 a.m. license for special functions like weddings and would be willing to come into the Board a week before the function or wedding to obtain permission for what was planned. See Board 3/27/17 transcript, p. 26. The city did not have an objection to the restaurant remaining open, but felt that the Appellant did not need a 2:00 a.m. license and that with the Appellant's licensing history, the revocation of the late license was justified.

If this matter goes to a full decision, the Department could find that there was no indirect link from the Appellant to the shooting. In that case, the revocation would be overturned. Or it

could be found that there was an indirect link from the Appellant to shooting so that in light of progressive discipline, the revocation could be upheld.

Prior to the Department issuing a decision, this matter is remanded to the Board so that it can consider whether the Board would like to enter into an agreement with the Appellant regarding the Appellant's operation.⁴

E. Administrative Penalties

The Appellant raised the issue of the administrative penalties imposed by the Board. Pursuant to R.I. Gen. Laws § 3-7-21, the Department does not have authority to hear appeals of fines. However, the Superior Court found that the Department has implied jurisdiction to review administrative fines imposed by local boards pursuant to R.I. Gen. Laws § 3-5-21. See *The Rack, Inc. d/b/a Smoke v. Providence Board of Licenses*, et al. CA No. PC 2011-5909 (7/22/13). In this matter, the City imposed a \$1,000 each for a violation of R.I. Gen. Laws § 3-5-21 and R.I. Gen. Laws § 3-5-23. The Department will not review these administrative penalties right now as no determination has been made whether the Appellant committed those statutory violations. If the parties resolve this matter, presumably the issue of administrative penalties would be addressed.

VI. FINDINGS OF FACT

1. On or about April 17, 2017, the Board revoked the Appellant's Class BVX license and imposed an administrative penalty of \$2,000 for violations of R.I. Gen. Laws § 3-5-21 and R.I. Gen. Laws § 3-5-23.
2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision.

⁴ Such an agreement could take many different forms depending on how the parties might fashion a resolution. Presumably, it would include the Appellant agreeing to only operate the downstairs as a restaurant. The parties might then agree that the late night license would be limited to pre-approved functions by the Board and/or that prior to using the late night license only for special pre-approved events, the late night license would not be used (suspended) for a certain time period.

3. A hearing on this matter was held on May 1, 2017 with the parties resting on the record. The parties made oral closings.

4. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW


Based on the testimony and facts presented:

The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

VIII. RECOMMENDATION

Based on the forgoing, the Hearing Officer recommends that this matter be remanded to the Board to determine whether the parties would like to fashion a resolution as to the operation of the Appellant's establishment. If the parties cannot fashion such a resolution, the Department will issue a decision.

Dated: MAY 19, 2017

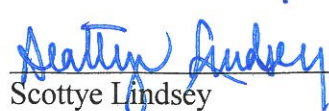

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT
 REJECT
 MODIFY

Dated: 5/22/17


Scottye Lindsey
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 22 day of May, 2017 that a copy of the within Decision was sent by first class mail, postage prepaid to Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904 and Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903 and by hand-delivery to Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920.