

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

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Ciello, LLC d/b/a Luv,  
Appellant,

v.

City of Providence, Board of Licenses,  
Appellee.

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DBR No.: 17LQ008

**ORDER ON MOTION FOR STAY**

**I. INTRODUCTION**

This matter arose from an appeal and motion for stay filed by Ciello, LLC d/b/a Luv (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding a decision taken by the City of Providence, Board of Licenses (“Board”) on May 24, 2017 to revoke the Appellant’s Class BVX license (“License”). A hearing on the motion for stay was held on May 26, 2017 before the undersigned pursuant to a delegation of authority by the Director of the Department. The parties were represented by counsel.

**II. JURISDICTION**

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.*

A liquor appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21 is considered a *de novo* hearing. The Department’s jurisdiction is *de novo* and the Department independently exercises the licensing function. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964); and *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964).

Because the Department's has such broad and comprehensive control over traffic in intoxicating liquor, its power has been referred to as a "super-licensing board." *Baginski v. Alcoholic Beverage Comm.*, 4 A.2d 265, 267 (R.I. 1939). See also *Board of Police Com'rs v. Reynolds*, 133 A.2d 737 (R.I. 1957). The purpose of this authority is to ensure the uniform and consistent regulation of liquor statewide. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964).

### III. MOTION TO STAY

A stay will not be issued unless the party seeking the stay makes a "strong showing" that "(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest." *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976). Despite the ruling in *Harsch*, the Supreme Court in *Department of Corrections v. Rhode Island State Labor Relations Board*, 658 A.2d 509 (R.I. 1995) found that *Harsch* was not necessarily applicable in all agency actions and the Court could maintain the *status quo* in its discretion when reviewing an administrative decision pursuant to R.I. Gen. Laws § 42-35-15(c). While appeals before the Department do not fall under R.I. Gen. Laws § 42-35-15(c), it is instructive to note that the *Department of Corrections* found it a matter of discretion to hold matters in *status quo* pending review of an agency decision on its merits.

### IV. STANDARDS FOR DISORDERLY CONDUCT

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 revoking or suspending 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, 295-296 (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.

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 (R.I. 1980).

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. *Therault v. O'Dowd*, 223 A.2d 841, 842-3 (R.I. 1966). See also *Scialo v.*

*Smith*, 99 R.I. 738 (R.I. 1965). As the Supreme Court has found, “the responsibility of a licensee for the conduct of his patrons within the licensed premises that makes it disorderly within the meaning of the statute is established by evidence showing a toleration or acquiescence in such conduct by the licensee.” *Cesaroni*, at 296. In a denial of renewal matter,<sup>1</sup> the Rhode Island Supreme Court 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 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.J.C. Enterprises* at 275. See also *Schillers*; and *Furtado v. Sarkas*, 373 A.2d 169 (R.I. 1977).

#### V. PRIOR DISCIPLINE

The Appellant received a ten (10) day suspension for a stabbing in 2015 and a two (2) day suspension in 2016 for violations (not disorderly conduct).

#### VI. DISCUSSION

The undersigned did not have a transcript of the Board hearing. Instead, the arguments were based on representations made by the parties. On the night in question there was some kind of argument or altercation inside the club. The parties dispute whether this incident rose to what could be termed “an altercation.” This occurred very near closing time and the Appellant turned the lights on and pushed the patrons outside. At the Board hearing, there was some testimony that a couple involved in the dispute were held back. The Appellant represented that it was this couple who caused the argument, and they did not go outside. The patrons exited about 1:50 a.m. and the

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<sup>1</sup> In order to suspend or revoke a liquor license, there must be a showing that the holder has breached some applicable rule or regulation. 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).

shooting occurred outside about 1:51-1:52 a.m. There were three (3) different shooters (the police recovered three (3) different shell casings) and three (3) victims (luckily there were not fatalities). The shooters had been inside the club and two (2) of the victims had been in the club. The victim who was found in the gas station which is next door to the club was not a patron. On the video, one victim can be seen punching someone before being shot.

The Appellant argued that what happened inside was not an altercation and cannot be linked to the shooting. It argued that a business (the Appellant) is being punished for the acts of criminals. The Appellant argued that the couple involved in the incident inside were not part of the shooters and the shooters were not involved so a link cannot be made to the club regarding the inside events and the shootings. The Appellant argued that the shooters retrieved their guns from their cars. The Appellant further argued that even if it was found that there was disorderly conduct, revocation is not warranted in this situation based on prior Department decisions. See *CAG Productions, LP d/b/a Euphoria v. City of Providence, Board of Licenses*, DBR No.: 16LQ022 (4/3/17); and *Ocean State Hospitality, Inc. d/b/a Fatt Squirrel v. Providence Board of Licenses*, DBR No.: 16LQ002 (3/31/16). The Appellant also represented that it has been closed for 19 days and would be willing to have a police detail. The Appellant is open on Thursdays, Fridays, Saturdays, and Sundays.

The Board argued that this is a very serious matter that happened while the club was closing and not after closing time. The Board argued that the security stationed inside pushed the patrons outside and then did nothing. The Board argued that while the club represented that there was a security staff member in the door, there was no one outside clearing the crowd and the club did not care what happened once its patrons were outside.

The City argued that the incident inside is more than yelling and that a review of the video shows that it was physical with pushing and shoving. The City argued that the Appellant's security plan did not work.

## **VII. CONCLUSION**

The Department has consistently followed progressive discipline barring an egregious act. Applying the stay criteria, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. However, it is discretionary to issue a stay in order to maintain the *status quo* pending an appeal. In this matter, it cannot be ascertained which party will prevail without a full hearing on what happened inside and then outside. If a stay is not granted for the revocation, the Appellant will not have a meaningful appeal. There seems to be an issue regarding the exiting of patrons which can be addressed by having a police detail and a revised security plan. Granting a partial stay maintains the *status quo* pending the full hearing. It should be noted that by the time this order is issued the Club will have been closed approximately 24 days.

## **VIII. RECOMMENDATION**

Based on the forgoing, the undersigned recommends that following order be made.

1. A stay is granted for the revocation of the Class BV license.
2. A stay is not granted for the revocation of the Class BVX (extended) license.
3. A police detail is mandated for Fridays and Saturdays. Failure to have a police detail on either day means the Appellant cannot open.
4. The Appellant shall submit a new security plan to the Board for its approval prior to re-opening which includes its procedures (for all times it is open) for crowd



control upon exiting. E.g. stationing a staff member(s) in the parking lot or in the street, etc.

Nothing in this order precludes the undersigned to revisit this order because of a change in circumstances. E.g. the violation of any of the conditions could warrant a review of the stay order.

**The hearing will be held on June 15, 2017 at 9:30 a.m. at the Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI.**

Dated: 5/30/17



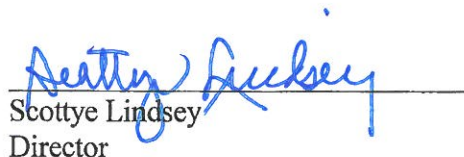
Catherine R. Warren  
Hearing Officer

**INTERIM ORDER**

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

ADOPT  
 REJECT  
 MODIFY

Dated: 5/30/17




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 30 day of May, 2017 that a copy of the within Order was sent by email and first class mail, postage prepaid, to the following: Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903, Nicholas Hemond, Esquire, DarrowEverett, LLP, One Turks Head Place, Providence, RI 02903, and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 02889 and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920

  
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