

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

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<b>Fuego Lounge, LLC d/b/a Fuego Lounge,</b>	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	<b>DBR No.: 21LQ005</b>
	:	
<b>City of Providence, Board of Licenses,</b>	:	
<b>Appellee.</b>	:	

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**DIRECTOR'S ORDER**

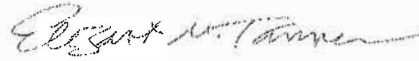
The Director modifies the Hearing Officer's recommendation and issues this order with respect to the motion for stay filed by Fuego Lounge, LLC d/b/a Fuego Lounge ("Appellant").

Sections I – VII and the first three sentences of Section VIII of the Hearing Officer's recommended order on motion for stay attached hereto are hereby incorporated herein by reference. Considering the public safety issues presented and representations regarding security failures, the last two sentences of Section VIII of the recommended order are modified and replaced with the following:

"The stay will be granted subject to a police detail at the weekends (Friday and Saturday) and the night before any State holiday when the Appellant is open. Prior to the Appellant re-opening, the Appellant shall obtain and notify the Board of its new security company and provide the Board with a copy of its security plan, which must include without limitation procedures for moving

patrons along outside the front of the club upon exit. The new security company and plan shall be in place before any re-opening.<sup>6</sup>

Dated: September 14, 2021



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Elizabeth M. Tanner, Esq.  
Director

### NOTICE OF APPELLATE RIGHTS

**THIS DECISION CONSTITUTES AN INTERLOCUTORY ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-15. 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 APPROPRIATE TERMS.**

### CERTIFICATION

I hereby certify on this 14th day of September, 2021, that a copy of the within Order and Notice of Appellate Rights 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 [Mmartone@providenceri.com](mailto:Mmartone@providenceri.com), Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, RI 02903 [nhemond@darroweverett.com](mailto:nhemond@darroweverett.com), and Louis A. DeSimone, Jr., Esquire, 1554 Cranston Street, Cranston, RI 02920 [ldatty@gmail.com](mailto:ldatty@gmail.com), and by electronic-delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920 [pamela.toro@dbr.ri.gov](mailto:pamela.toro@dbr.ri.gov).

*Diane L. Paravisini*

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<sup>6</sup> At hearing, the Appellant indicated that the security company did not follow its security plan that evening. The Appellant indicated that the security plan is a good plan but needs to be followed.

STATE OF RHODE ISLAND  
DEPARTMENT OF BUSINESS REGULATION  
PASTORE COMPLEX  
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Fuego Lounge, LLC d/b/a Fuego Lounge	:	
Appellant,	:	
	:	
	:	DBR No. 21LQ005
v.	:	
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	

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**ORDER RE: MOTION FOR STAY**

**I. INTRODUCTION**

This matter arose from a motion for stay filed on August 30, 2021 by Fuego Lounge, LLC d/b/a Fuego Lounge (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on August 25, 2021 by the City of Providence, Board of Licenses (“Board”) suspending the Appellant’s Class BV liquor license for 60 days and thereafter suspending the Appellant’s Class BVX (2:00 a.m.) license for 120 days. A hearing on the motion to stay was heard<sup>1</sup> on September 2, 2021 before the undersigned who was delegated to hear this matter by the Director of the Department.

**II. JURISDICTION**

The Department has jurisdiction over this matter pursuant to 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

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<sup>1</sup> Due to the COVID19 pandemic, the stay hearing was heard remotely.

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. THE BASIS FOR SUSPENSION

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, or permits any gambling or unlawful gaming to be carried on in the neighborhood, or permits any of the laws of this state to be violated in the neighborhood, in addition to any punishment or penalties that may be prescribed by statute for that offense, 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.

R.I. Gen. Laws § 3-5-21 states in part as follows:

(a) Every license is subject to revocation or suspension and a licensee is subject to fine by the board, body, or official issuing the license, or by the department or by the division of taxation, on its own motion, for:

- (1) Breach by the holder of the license of the conditions on which it was issued;
- or
- (2) Violation by the holder of the license of any rule or regulation applicable;
- or
- \*\*\*
- (4) Breach of any provisions of this chapter.

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. *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964). The statute also forbids a licensee from permitting any laws of Rhode Island from being violated. 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 a 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).

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).

#### **IV. STANDARD FOR ISSUANCE OF A STAY**

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (R.I. 1976), 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.” 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). The issue before the undersigned is a motion to stay a Decision which is subject to a *de novo* appeal and does not fall under R.I. Gen. Laws § 42-35-15(c). Nonetheless, 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.

#### **V. PRIOR DISCIPLINE**

The parties agreed the Appellant has been licensed for three (3) or four (4) years and had an instance of entertainment without a license in 2019 and again in 2020. In August 2020, the Appellant served a 30 day suspension by agreement of the parties due a felony assault. The Appellant represented that it never agreed it was responsible for the assault but agreed to the sanctions which included providing a new security plan.

**VI. ARGUMENTS**

The Appellant argued while there was a shooting outside the club, the Board agreed that there had been no disturbance inside, and it could not be linked directly or indirectly to the Appellant. The Appellant argued that it would suffer irreparable harm if the Appellant is closed pending the hearing especially as it has been closed since August 7, 2021. The Appellant stated it would accept a police detail at weekends as a condition of a stay

The Board argued that the Appellant had a responsibility for clearing the area in front of the exit of its patrons as they exited and the security did not do that and the fight outside broke out in front of them. The Board argued that the sanctions were based on the violations and the fact that there had been a prior incident resulting in a 30 day suspension.

**VII. DISCUSSION**

The parties stipulated as follows:

1. All parties relevant to the incident were present inside the Appellant that evening.
2. On the evening in question, there was no disturbance inside the establishment.
3. There is no allegation of a weapon inside the establishment on the evening in question.
4. A total of 157 seconds elapsed from the time of the first punch being thrown to the firing of the first shot.
5. The times of the following pertinent facts are:
  - a) First shots ----- 2:17:59 am
  - b) First 911 call ----- 2:18:52 am
  - c) First 911 call from security ----- 2:19:15 am
  - d) First 911 call from owner ----- 2:20:57 am
  - e) First police officer on scene ----- 2:21:37 am
6. The fight culminated in a double homicide.

Based on representations at hearing, there were (2) groups of patrons involved in the fight. Both groups were inside the Appellant in the evening but did not interact with each other. By 2:03 a.m., both groups were outside. Both groups were outside near the club standing separately near the security personnel. With the first shot being fired at 2:17:59 a.m., 157 seconds prior to that time is 2:15:22 a.m. so that the first punch was thrown at 2:15:22. a.m. There was a representation that the gun used was retrieved from a car by the shooter.

There was no dispute that security personnel did not try to disperse the patrons while they were standing outside the club at 2:03 a.m. The Appellant argued the groups were in the street, but the City argued that part of any security plan by a liquor licensee includes moving patrons along to leave and clear the area. The City also argued that security did not intervene after the first punch was thrown. The City represented that during the fight, one member of the security staff picked up a satchel from one of the people fighting and took it inside and removed an item from the patron's satchel while the patron was in the midst of the fight and put the patron's property in the security staff's own pocket, visibly on camera. The City argued that rather than being involved in dispersing the fight, security were doing other things like taking property.

The Appellant indicated that there may have been other violations by the Appellant that night but that these sanctions imposed by the Board were due to the fight and shooting. The Appellant acknowledged that at the full hearing before the Department, any other violations may also be addressed.

The parties referenced various Department cases that address the issue of what kind of disorderly conduct can be inferred directly or indirectly to a liquor licensee.<sup>2</sup> *Ciello, LLC d/b/a*

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<sup>2</sup> In *The Vault Lounge, LLC v. City of Providence, Board of Licenses*, DBR No.: 16LQ008 (9/14/16), a patron was ejected from a club and did not leave the area and tried to get back inside so that the club was indirectly responsible for the patron's shooting 18 minutes after the ejection. See also *Stage Bands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.) (disturbances and a shooting on one night justified revocation);



*Club Luv v. City of Providence, Board of Licenses* (9/14/17) reviewed the requirements under *A.J.C. Enterprises* and *Cesaroni* for a disturbance inside to be connected to a disturbance outside.<sup>3</sup> It also discussed a liquor licensee's obligation to maintain security while its patrons exit. Based on the arguments at hearing, the City is not arguing that there was a disturbance inside that culminated in the shooting outside.<sup>4</sup> Rather, it argued there were security failures by the Appellant. The Appellant did not deny there were security failures. The disagreement revolved around the appropriate penalty.

The Appellant argued that the security lapses were not as severe as *Club Luv* in that no one tried to re-enter with a gun. The City disagreed. In *Club Luv*, there were serious violations regarding security so that a long suspension was merited. In *Club Luv*, there had not been any other prior disorderly conduct (associated with that owner); however, its Class BV license was suspended for 30 days with the late night Class BVX suspended for 180 days (so that the first 30 days of the BV and BVX license were concurrent) for security failures regarding the exiting of patrons.

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and *Cardio Enterprises, d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (killing of patron with incident starting inside and escalating outside with licensee failing to call the police justified revocation).

In *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ022 (6/24/14), two (2) men were ejected for being drunk and belligerent. When they were outside, a car drove by and the driver fired a gun in the air. The police did not identify a victim or suspects. While the two (2) incidents happened closed together, there was not enough evidence to make a finding that the shooting arose from the disturbance in the club. In *D. Liakos d/b/a Van Gogh v. Providence Board of Licenses*, DBR No.: 16LQ011 (10/31/16), there was no evidence of any disturbance inside the bar that spilled outside where it culminated in the fight. 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.

<sup>3</sup> *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 causational 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." However, *Cesaroni* speaks of disorderly conduct that occurs within premises where liquor is dispensed under a license that causes either directly or indirectly conditions in the neighborhood that annoy the neighborhood (e.g. disorderly conditions). *A.J.C. Enterprises* speaks of making an inference that the disturbance outside had their origins within the premises.

<sup>4</sup> As noted in *Club Luv*, no one disputes that a fistfight that escalates to a shoot-out is dangerous and criminal and not the type of activity that anyone would want either near a club or elsewhere. However, the issue before the Board was purely a legal issue regarding the Appellant's responsibility, if any, for any disorderly conduct.

The information received by the undersigned is based on representations of the parties. The undersigned did not have access to the recording of the Board hearing.<sup>5</sup>

The Department has consistently followed progressive discipline barring an egregious act. *Supra.* Assuming the security violations are proved, that violation could rise to the level of administrative penalties and/or a term of suspension. In addition, the hearing will address other allegations of other violations.

Applying the stay criteria, a stay will not issue 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 outside in terms of security. If a stay is not granted for the suspension, the Appellant will not have a meaningful appeal. The parties agreed that the Appellant has been closed since August 7, 2021 (day of the shooting).

#### **VIII. RECOMMENDATION**

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 outside regarding security. If a stay is not granted for the suspension, the Appellant will not have a meaningful appeal. The granting of a partial stay maintains the *status quo* pending the full hearing. The stay will be granted subject to a police detail at the weekends (Friday and Saturday) and the night before any State holiday when the Appellant is open. Prior to the Appellant re-opening, the Appellant shall obtain and notify the Board of its new security company that shall be in place before any re-opening.<sup>6</sup>

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<sup>5</sup> If the Board hearing is introduced at the full hearing as an exhibit, it was agreed by the parties that it would be under seal. Thus, the Board hearing recording is under seal.

<sup>6</sup> At hearing, the Appellant indicated that the security company did not follow its security plan that evening. The Appellant indicated that the security plan is a good plan but needs to be followed.

Dated: September 7, 2021

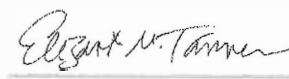
  
Catherine R. Warren  
Hearing Officer

**INTERIM ORDER**

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

\_\_\_\_\_ ADOPT  
\_\_\_\_\_ REJECT  
  X   MODIFY

Dated: 09/14/2021

  
Elizabeth M. Tanner, Esquire  
Director

A hearing will be scheduled on a mutually convenient date to be determined by the parties.<sup>7</sup>

**NOTICE OF APPELLATE RIGHTS**

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**CERTIFICATION**

I hereby certify on this 14th day of September, 2021 that a copy of the within Order and Notice of Appellate Rights were 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, R.I. 02903, Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, R.I. 02903, and Louis A. DeSimone, Jr., Esquire, 1554 Cranston Street, Cranston, R.I. 02920 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

  
Diane L. Paravisini

<sup>7</sup> Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant is responsible for the stenographer.