STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RI 02920

DL ENTERPRISES **d/b/a East Bay Tavern** **Appellant,**	
v.	**DBR No. 14LQ009**
East Providence City Council, **Appellee.**	

DECISION

I. INTRODUCTION

DL Enterprises d/b/a East Bay Tavern ("Appellant") filed an appeal with the Department of Business Regulation ("Department") for review of the March 4, 2014 decision of the East Providence City Council ("Council") revoking its Class BV liquor license based on an alleged failure to maintain an orderly establishment on February 6, 2014. By Order dated March 14, 2014, the Department issued a stay on the following condition: The Appellant shall be prohibited from providing live entertainment on the premises during the stay unless the Appellant complies with written instructions from the Chief of Police for appropriate security personnel, detail officers, and/or police surveillance."[1]

The Department received the administrative record pursuant to R.I. Gen. Laws § 3-7-21(c), which consists of all the exhibits that were admitted at the Council hearing. In making this recommendation, the following were also reviewed: video recordings of the Council's May

[1] On March 21, the Appellant filed a Motion to Determine Detail Conditions(s) as Unreasonable. The Department responded that it would consider the arguments set forth in the motion in rendering a full decision on the merits.

4, 2014 show cause hearing and the February 26, 2014 meeting (discussion on continuance), the police-seized video recordings of the establishment on the night in question,[2] written submissions of counsel, and oral argument of counsel and testimony of the East Providence Police Chief at the stay hearing. The record was closed on March 26, 2014.

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.*

III. ISSUE

Should the Appellant's liquor license should be revoked based on an alleged failure to maintain an orderly establishment on February 6, 2014?

IV. STANDARD OF REVIEW

The Rhode Island Supreme Court has explained that "§ 3-7-21 contemplates the removal of a cause by operation of law from a local board to the [state liquor] administrator," a role statutorily vested in the Department. *Cesaroni v. Smith*, 98 R.I. 377, 379, 202 A.2d 292, 294 (1964). "Under such removal[,] jurisdiction is de novo, pursuant to which [the Department] independently exercises the licensing function." Id. [3]

V. MATERIAL FACTS AND TESTIMONY

The video surveillance of the night in question shows that prior to the disturbance, a male later identified as an aggressor takes off his backpack and hands it to a female. At approximately

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[2] The video footage was seized from the premises by USB flash drive download by Detective Sergeant Grant on February 11, 2014.

[3] The Appellant's oral and written submissions made reference to the Board's alleged bias and pre-judgment. However, because the standard of review is *de novo*, the Department's decision is considered "unaffected by any error inhering in the exercise of the licensing function by a local board acting within its territorial jurisdiction." *Cesaroni*, id. at 379-380. In *Balch v. Pastore*, the Superior Court stated: "The final argument advanced by the plaintiff is that he was deprived of a fair hearing before the Board of License Commissioners because of the alleged bias of several of its members;" however, "as previously noted, the Administrator conducted a hearing de novo." C.A. 793198, 1983 WL 486780 (R.I. Super. Aug. 15, 1983). "Therefore, any taint that may have resulted from alleged bias on the part of the Board has been removed." Id.

11:53 p.m., the video shows that the male and several other individuals approach the victim and begin attacking him with punches and kicks. The victim escapes briefly and a chase ensues. He is again apprehended, punched and kicked. Then, although a specific weapon cannot be seen on the video, one of the aggressors can be seen making a motion that appears to be consistent with a stabbing gesture, as distinguished from the previous punching/kicking gestures. After the victim is down, it appears the aggressors quietly leave the establishment. The victim recovers on the ground and is then carried outside of the establishment with the help of at least two persons, one of whom appears to be an employee (as identified by what looks like a reflective vest). The victim's legs are dragging, indicating an inability to walk, but it is not clear the extent of the victim's injuries or whether he is too intoxicated to walk or both.

Lt. David's February 12, 2014 Officer's Report, which was entered as Exhibit H before the Council, provides a more detailed perspective on what can be seen in the video based on Lt. David's 15 years of experience in detective investigations. Lt. David's testimony before the Council corroborates the statements in that police report. Specifically, the report reads as follows:

> "It is clear from the footage that at 23:53 Hrs. (on screen time: 2014-02-07 12:53:36 AM), a disturbance breaks out in the area of the bar immediately outside the dance floor. A male is seen standing alone (Watts) and approached by five other males. One of the males begins swinging his right hand at the head of Watts, striking him several times. Watts escapes briefly, running around the dance floor back to the spot where he is first approached. The original attacker and a second male give chase. One of the other males can be seen physically restraining another party who attempts to intervene. When Watts makes it back, he is again attacked by the two males. Both can be seen punching at Watts. A third male can be seen making an underhand stabbing motion, several times, at Watts' torso, with something in this right hand. Although the video is not definitive, the object appears consistent with a knife."
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> "The five males quickly disperse and a crowd gathers around Watts on the floor. Two men in reflective vests quickly attend to Watts and the men around him. One of the men with a vest is recognizable as Mr. Tague [manager]. After approximately a minute of attending to Watts on the floor; Mr. Tague and two other men lift him up and walk him to

the door of the tavern. It is clear from the video footage that Watts is injured. He is unable to stand or walk on his own. He is carried away with each arm other the shoulders of another man and his feet dragging on the floor. Mr. Tague is walking directly behind him as this is happening."

"A different camera angle shows the five attackers gather on the dance floor, seconds prior to the attack. Several of the men put drinks down and one takes off a backpack he is wearing and hands it to a girl. The men then quickly walk towards where Watts is standing."[4]

At the hearing before the Council, Lt. David also testified that one of the aggressors could be seen taking off an outer garment which appeared to be in preparation for the ensuing attack.

The testimony and police reports of other police officers provide the evidence of what occurred after the incident observed on the surveillance video. Dispatcher Rainho's police report was entered as an exhibit before the Council though he did not testify before the Council. It indicates that shortly after the incident, at approximately 00:25 hrs on February 7, dispatch received a call from Providence Police advising that "a 22 y/o male, later identified as Antonio Watts, was currently at Hasbro Children's Hospital receiving treatment for a stab wound which he stated had occurred at a bar in East Providence." Dispatcher Rainho's report indicates that "at approximately 00:42 hrs. dispatch received a call from Steve Tague, East Bay Tavern asking if the PD could have a car 'drive through the lot' because 'we had a good crowd tonight." Mr. Tague is the manager of the East Bay Tavern. Rainho further states "Mr. Tague did not state that there was, or had been any altercations or assaults at the Tavern."

[4] According to Patrol Officer Pendergast's report, "after reviewing the video surveillance cameras inside the bar we were able to determine an altercation occurred but could not identify the primary aggressor or observe anyone get stabbed." And, according to Sergeant Masaitis's report, "the video does not show Watts in the scrum and doesn't show him being assaulted by a knife or other cutting instrument." However, it appears that Lt. David has more experience and conducted an off-site review of the video that would have been more scrutinous that the initial review of the on-site officers.

Patrol Officer Pendergast provided testimony before the Council which testimony is corroborated by his police report of the incident entered as an exhibit before the Council as part of Exhibit F. Pendergast testified that he responded to Hasbro Children's hospital at approximately 12:30 a.m. on the night in question. He stated that Providence police officers had determined that the victim was stabbed in an East Providence establishment, at the East Bay Tavern. More specifically, as stated his report, Providence police officer Ziroli stated that the victim "was driven to the hospital by his two friends after suffering several stab wounds to the back." The friends told Providence police that "the stabbing occurred at the East Bay Tavern in East Providence." Officer Pendergast testified that he interviewed the victim at the hospital and observed 5-6 puncture wounds on his back. Pendergast testified that the victim was uncooperative and belligerent but that he indicated that he was at the East Bay Tavern. Pendergast's report corroborates that the victim himself "stated that he was at a bar in East Providence with live music" and that "[s]everal minor stab wounds were observed on Watts' mid to upper back." As further detailed in the police report, "Watts stated that 4-5 black males 'jumped him' and stabbed him in the back." Officer Pendergast testified that he responded to the East Bay Tavern after his investigation at the hospital. Upon entering, he smelled an unusually strong odor of bleach. He testified that it appeared that an area was cleaned near the bar. Pendergast testified that Tague told him that the victim walked away without issues, but that Pendergast's view of the video indicated that the victim was carried out.

Patrol Officer Ogni provided testimony before the Council which testimony is corroborated by his police report of the incident entered as Exhibit G before the Council. Ogni testified that he responded to the East Bay Tavern at approximately 12:40 a.m. He spoke to doorman Thomas Gall who told him that some type of altercation had occurred between three or

so parties and they had been ejected from the establishment. Ogni then asked Tague about the incident and Tague responded "everything's been fine." Ogni then informed Tague that Gall had told him that a disturbance had occurred and Tague responded that there was an altercation but that it was "nothing." Ogni then informed Tague that other officers were at the hospital with a victim at the hospital who had sustained stab wounds. Tague responded that if there was a stabbing it hadn't happened in his establishment and the involved parties left the establishment in fair condition. Ogni also testified that there was a distinct odor of bleach in the establishment as if it had been cleaned very recently. Ogni's report also indicates that while he was responding to the East Bay Tavern, he witnessed patrons yelling and a male patron getting shoved near the doorway, and that he handcuffed one individual and called for additional units. The record indicates any disturbance was quickly quelled.

Other officers who did not testify before the Council provided reports of their observations and interviews with witnesses, which were entered as exhibits before the Council. According to the police report of Sergeant Masaitis, admitted as part of Exhibit F, Masaitis interviewed the victim at the hospital and "Watts stated the altercation was over a female." "[A]fter asking several questions officers were able to ascertain a possible location of the assault, The East Bay Tavern." Masaitis's report states that he "observed at least two puncture type wounds on his back and was told he had at least four more, two on his upper torso and two on his legs, that [he] could not see." Recounting Masaitis's interview with Tague later on, Masaitis's report indicates Tague "admitted to officers there was an altercation inside around midnight, which he stated was broken up by himself and a bouncer." "Tague stated no one was stabbed and that no one appeared injured and the people involved in the altercation were thrown out of the bar." According to Sergeant Masaitis's report, "immediately upon entering the main

entry/exit door, [he] detected a strong odor of bleach;" "as [he] responded downstairs towards the bar area, the odor of bleach became stronger."

The report of another officer who responded to East Bay Tavern, Patrol Officer Grant, was entered as part of Exhibit F. According to that report, when Grant asked "if there was an altercation involving a stabbing," Tague "stated he didn't see it all happen but his employee/security Thomas Gall did." Gall "stated there was an altercation with several males;" "it appeared they were kicking and punching an individual on the ground." According to the report, "he went onto say that he traveled to the area to break up the altercation;" "this is when he stopped an individual who had picked up a bar stool in an attempt to use it on the individual on the ground." When asked "why he didn't call the police," Gall responded "I don't know, you will have to ask Steve [Tague]." When Tague was asked "why he didn't call the police," the report states that Tague responded "the individual who was getting assaulted had got up on his own and walked out of the East Bay Tavern unassisted."

Steven Tague's February 12, 2014 witness statement confirms that "at about midnight or a little before a fight broke out inside the bar with four males the door men and I went to break it up." Tague stated that he did was not aware of anyone being stabbed, though he attended to "a kid who was limping which [he] thought…injured his leg in the fight." Tague further stated that he "told the people still arguing to 'relax' and to start exiting the establishment." According to Tague's statement, an individual who identified himself as the victim's brother said he was going to take the victim to the hospital. He goes on to say "the guy who was hurt said get off me and walked away towards the lot."

At the Council hearing, Tague testified that he has been operating and managing the East Bay Tavern for 8 years, with use of a DJ for the last 5-6 years. He testified that he never

suffered any formal disciplinary action. He testified that he followed the conditions set by the Council during the period in which the hearing was continued, detail officers, earlier closing on Saturday, etc. He testified he was not aware that anyone was stabbed at the establishment and he believed the victim was assisted out because he was intoxicated. Tague admitted that he made a mistake by not calling police following the incident and promised that in the future he would call the police in the event of any incident, however minor it may seem. Tague testified that the bleach was used to clean the bathroom and that some was spilt during the period of time he was renovating to a new toilet.

The Police Chief testified before the Council and the Department, summarizing the above testimony and reports of the investigating officers. He also testified that there have been a number of incidences at the establishments for which no formal disciplinary action had been taken. He testified that after a prior alleged incident, the Appellant had informally agreed with the Police Chief to call police immediately if another disturbance occurred in the future, but that he failed to do so in this instance.

VI. DISCUSSION

R.I. Gen. Laws § 3-5-23(b) provides:

> "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."

"The word 'disorderly' as used [in § 3-5-23] contemplates conduct within the 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." *Cesaroni, supra*, 98 R.I. at 384. If an incident causes a public safety issue, within the establishment and by commanding police resources to respond, the establishment is considered to have become "disorderly" within the meaning of R.I. Gen. Laws § 3-5-23. In *PAP Restaurant, Inc. d/b/a Tailgate's Grill and Bar v. Town of Smithfireld, Board of License Commissioners*, the Department found that a "licensee who generates such an effect on a local police force cannot be heard to say it did not disturb the surrounding neighborhood." DBR 03-L-0019 at 24 (May 8, 2003). And, in *Chalkstone Steakhouse d/b/a Breakpoint Café v. City of Providence Board of Licenses*, the Department found that an "incident forc[ing] the police department to commit additional resources to the establishment, jeopardize[es] the safety of other neighborhoods." LCA-PR-05-33 at 13 (April 20, 2006).

The term "permit" in R.I. Gen. Laws § 3-5-23 is interpreted broadly as meaning failure to prevent violations from occurring on the premises. The R.I. Supreme Court explained that "[t]he administrator would be justified in finding that the licensee had permitted [a violation of law] within the licensed premises if there were any legal evidence from which he could find, or reasonably infer, that petitioner had failed in his obligation to maintain an efficient and affirmative supervision of the business to which his license applied." *Scialo v. Smith*, 99 R.I. 738, 741-142 (1965). "[I]t is the responsibility of an alcohol beverage licensee so to supervise the operation of a business carried on pursuant to his license as to make certain that the laws to which his license is subject are not violated." Id. at 741 (1965). *See also DiTraglia v. Daneker*, 83 R.I. 227, 115 A.2d 345. "The liquor laws penalize for infractions of laws...[and] make a licensee absolutely accountable for what happens on his premises." *Vitali v. Smith*, 105 R.I. 760, 762 (1969). R.I. Gen. Laws § 3-5-23 "does not require evidence of consent either expressed or

implied." *Therault v. O'Dowd*, 101 R.I. 395, 398 (1966).[5] "That he is not aware of what is going on is not available as an excuse or a defense." *Vitali*, id. at 762. This is true even in cases involving a "single isolated violation." Id. at 761. "Onerous though this burden may be, it is within the police power of the legislature to impose it." *Scialo*, *supra*.[6]

The record establishes by a preponderance of the evidence that a physical altercation occurred inside the premises on February 6, 2014.[7] All the testimony supports the conclusion that the altercation involved punching and kicking in a group of at least three patrons, which appears from the surveillance video to have culminated in a disturbance of a larger group of patrons. Although no weapon was recovered and none was clearly visible on the video surveillance, it can be reasonably inferred from the facts in evidence that a stabbing with some object did occur. Such an inference is supported by the following evidence: the video surveillance shows a motion consistent with a stabbing; Officer Pendergast represented that the victim told the officer he was stabbed in the back; and the puncture wounds were observed in the victim's back by several officers at the hospital. It can further be inferred that the attack was

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[5] For example, in *Therault*, the Rhode Island Supreme Court found against the petitioner despite the testimony that the illicit conduct occurred at "the busiest of the day and that it was not probable that the petitioner, busily engaged in serving patrons, could have been aware of [another patron's] activities" and that the licensee "had no knowledge of any [illicit activity] being conducted on his premises and would not have tolerated it under any circumstances."

[6] Further explaining "the meaning of the word 'permit' as it is used in G.L. § 3-5-23," the Superior Court has opined that "[c]onsidered in that context it is clear that the legislature meant to do more than prohibit a licensee from condoning, supporting or participating in the proscribed conduct;...[r]ather, it intended to impose an affirmative duty upon the licensee to effectively supervise his patrons so as to prevent that conduct from occurring." *Balch v. Pastore*, C.A. 793198, 1983 WL 486780 (R.I. Super. Aug. 15, 1983). A violation may be established "if the licensee fails to supervise the premises in the manner prescribed by statute even if the licensee is unaware of the illegal activity on the premises." *Pop's & Pizzi Lounge, Inc. v. Voccola*, P.C. 87-5181, 1989 WL 1110319 (R.I. Super. Aug. 31, 1989)(discussing permitting drug infractions occurring on the premises and citing *Therault v. O'Dowd,* 101 R.I. 395, 223 A.2d 841 (1966)).

[7] *Parker v. Parker*, 238 A.2d 57, 60 (R.I. 1968) ("satisfaction by a 'preponderance of the evidence' [is] the recognized burden [of proof] in civil actions"). "When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence." *Narragansett Electric Co. v. Carbone*, 898 A.2d 87, 100 (R.I. 2006).

"systematic" because the group of aggressors approached the victim together after preparatory actions such as setting down drinks, removing a backpack, and removing an outer clothing item.

Based on the foregoing, it is evident that the incident occurring on February 6, 2014 constituted a violation of R.I. Gen. Laws § 3-5-23(b). The Appellant "permitted" the premises to become "disorderly" so as to "annoy or disturb" the community. Clearly, this incident is "disorderly" as is any incident in which a physical altercation occurs inside a liquor establishment given the public safety issues it raises, including the demand for police resources that may reduce protection throughout other neighborhoods. Where a violation occurs on a licensee's premises, the necessary conclusion is that the licensee did "permit" the violation to occur within the meaning of the term established by the case law. *Vitali*, *supra* (in applying § 3-5-23, "what is all-important and decisive is whether there has been a violation of the law").

It is unquestionable that the violation is serious and that Tague's response was not that of a responsible operator. While the evidence is inconclusive as to whether the smell of bleach indicates an affirmative attempt by Tague to conceal evidence of the stabbing, the evidence does indicate that Tague was not forthright with police when questioned after the incident. He did not call police immediately when the incident occurred and when he did call the police to ask with assistance at closing, he did not even mention the earlier incident. Tague had knowledge of the incident, at least as to the serious beating of a patron, but did not make a timely phone call for rescue or police to enable optimal care for the victim and immediate investigation of the incident, individuals involved, and any witnesses. Even if Tague did not see the victim was stabbed, Tague admitted that the brother told him that he was taking the victim to the hospital. At that point, Tague had a duty to further inquire as to the injury. Tague knowingly violated his duty to investigate the happenings at his establishment and report dangerous activity to police and

rescue. Tague's failure to call police promptly after the incident is especially concerning in light of his prior promises to do so. The Police Chief testified before the Department, without disagreement from the Appellant, that after a prior alleged incident, the Appellant had informally agreed with the Police Chief to call police immediately if another disturbance occurred in the future. By breaching this promise, the Appellant demonstrates irresponsibility and untrustworthiness as a liquor licensee.

Having found that a violation of R.I. Gen. Laws § 3-5-23(b) did occur on the premises, the analysis turns to the question of whether revocation was the appropriate disciplinary measure. Pursuant to R.I. Gen. Laws § 3-5-21(a), "[e]very license is subject to revocation or suspension and a licensee is subject to fine...for violation by the holder of the license of any rule or regulation applicable," including violation of R.I. Gen. Laws § 3-5-23. "[T]here are no statutorily prescribed standards governing the imposition of sanctions for liquor control violations." *Pakse Mkt. Corp. v. McGonaghy*, CIV.A. PC01-0927, 2003 WL 1880122 (R.I. Super. Mar. 14, 2003). The Department is "authorized to impose any reasonable sanction that would deter appellant from repeatedly violating the law." Id.

"Revocation of a...liquor license essentially functions as the death penalty in the context of license violations." *Jake & Ella's, Inc. v. Dep't of Bus. Regulation*, 2002 WL 977812 (R.I. Super., 2002). "Because it is such a harsh penalty, it should be reserved for only the most severe situations." Id. Therefore, the Department has held that "[t]he revocation of a liquor license is a relatively rare event and is reserved for a severe infraction or a series of smaller infractions that rise to a level of jeopardizing public safety." *In re Cardio Enterprises d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No. 06-L-0207 at 13 (03/28/07). Sanctions

should be "just, reasonable, and consistent with prior sanctions." *Curbside, Inc. v. Cumberland Town Council*, DBR No. 09-L-0086 at 18 (09/17/09).

A review of several "disorderly" revocation and non-renewal cases demonstrate the type of "rare event" in which "death penalty" is appropriately imposed. First, this is not a case in which one incident is severe enough to justify revocation. For example, *In re Cardio Enterprises, supra*, revocation was justified when one patron stabbed and killed another patron. Id. at 18-19. In that case, there was evidence that the altercation began inside with a fight near the pool table and police observed blood on the pool table and trailing from the entrance to the victim's body found dead outside the establishment." Id. In the instant case, the disturbance was quelled before any life threatening injuries were sustained.

The second category of "disorderly" cases involves licensees with a violation history, a series of infractions that justify revocation. For example, in *Cesaroni v. Smith*, neighbors testified that the following problems had been recurring: "after the closing hour on Friday and Saturday nights patrons leave the premises and gather in the street, brawling and quarreling among themselves and using bad language;" "some of the females quarreled about matters which would not be good for children to hear;" and "feminine garments [were] lying about the street." 98 R.I. 377, 382 (R.I., 1964). In *Edge-January, Inc. v. Pastore*, neighbors testified that the following problems had been recurring: excessive noise such as loud yelling and car horns, public urination, illegal parking, and litter such as smashed bottles. 430 A.2d 1063, 1064 (R.I. 1981). In *A.J.C. Enterprises, Inc. v. Pastore*, "[s]everal witnesses testified that they watched people urinate on private property after leaving Back Street and that when the establishment closed at night there was a great deal of noise because people were yelling, screaming, slamming car doors, and revving engines." 473 A.2d 269, 275 (R.I.,1984.) In the instant case, no

neighbors testified as to any chronic issues created by the club such as noise, litter, or other nuisance.

In *Manuel J. Furtado, Inc. v. Sarkas*, a first disturbance involved a large crowd coming out of the premises, three shots were fired outside, and a young woman was wounded in the leg." 118 R.I. 218, 220 (1977). A second disturbance involved an officer "called by a neighbor reporting a fight in progress outside [the establishment]" and "[w]hen he arrived there was blood all over the sidewalk." Id. A third incident involved a "large fight outside, with one person bleeding badly as a result of a blow with a baseball bat." Id. On yet another occasion, the premises were searched and officers "found some weapons, needles and syringes on the floor." Id. at 221.

In *Gravino v. City of Warwick*, revocation was upheld where: "DBR heard testimony from police officers of the City concerning *eight* separate instances of fights and disorderly conduct among the patrons of Club Tropics" and "the teenage patrons of Club Tropics often assaulted police officers during these incidences of fighting and that the officers often feared for their safety." 1999 WL 485869 (R.I. Super.. 1999). In *Stage Bands, Inc. v. Department of Business Regulations for the State of Rhode Island*, revocation was upheld where the following occurred at the establishment: a "disturbance involving at least ten people occurred inside the club;" "a second disturbance involving at least five people occurred inside the club," and a third disturbance occurred outside the club, involving "five to eight people who were kicking a subject who was lying on the ground and had been shot in the head." 2009 WL 3328508 (R.I. Super., 2009). In *Stage Bands*, the licensee had a history of being called before the Board for prior disturbances and underage drinking charges. Id. In *Bourbon St., Inc. v. Newport Bd. of License Comm'rs*, revocation was upheld where the establishment had a several charges of disorderly

conduct on the premises, including a violent altercation involving assault on a police officer, as well as overcrowding, underage drinking, unlawful drinking promotion, and accepting persons with false identification. 1999 WL 1335011 (R.I. Super., 1999).

This is not a case where there is a chronic nuisance, multiple disturbances, or where the licensee has a violation history. In this case, the Council did not establish that the Appellant had any prior violations on its disciplinary record in the last eight years of operation.[8] Nor is it a case in which the single incident was so egregious so as to justify revocation.

While revocation is not appropriate in this case, a suspension is appropriate as discipline for a first offense of a serious disturbance. This is consistent with the "progressive disciplinary approach." *C&L Lounge, Inc. d/b/a Gabby's Bar and Grille v. Town of North Providence*, LC-NP-98-17 (04/30/99)(reversing a revocation and imposing a 30 day suspension where "the level of disorderly conduct in the case at bar does not rise to a level...which justifies revocation, absent a progressive disciplinary pattern.") In accordance with the progressive disciplinary approach, first offense serious disorderly conditions should typically be addressed with "swift suspensions" prior to a revocation. Id. Such disorderly conditions, if permitted in the future, "may justify revocation when lesser measures, such as suspension, have failed." Id. But without a violation history, suspension is the appropriate step within the progressive discipline policy.

In making the determination as to what length of suspension is warranted, comparative review of several suspension cases provides guidance. However, the Department does not "apply a mechanical grid" because "each matter has its own set of facts that need to be considered." *Curbside, Inc.*, *supra*, id. at 18.

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[8] The Police Chief testified before the Department as to other incidents at the premises anecdotally. However, no formal discipline has ever been rendered, meaning no findings of fact on the allegations were made following a hearing. The Appellant will not be held accountable for allegations in the past without formal action having been taken. Without having been presented with detailed evidence to prove these alleged prior violations at the Department level, neither could the Department make independent findings of fact thereon.

In *JJAM Sports, Inc. d/b/a LaCabana Night Club Sports Bar and Grille, Inc. v. Lincoln Board of License Commissioners*, LCA-LI-99-05 (12/27/99), the Department upheld a two (2) day suspension for a fight inside the bar and a second fight outside in the parking lot where a significant number of police officers were called to the scene (including from adjoining communities) and one police officer had a beer bottle thrown at him. In *Curbside*, *supra*, a two (2) day suspension was imposed where it was found a "fight carried on outside albeit just shoving and pushing."

In *Balch v. Pastore*, a fourteen (14) day suspension was upheld where it was found that "[d]uring the period between January and June of 1979 the Warren Police were dispatched to plaintiff's premises on *twelve occasions* in response to complaints of fights or excessive noise emanating from the sidewalk, street or a parking lot in the immediate vicinity, including an incident requiring the assistance of a police dog…to disperse a crowd of twenty-five people who had apparently witnessed or been involved in a fight" and where "arrests were made for the screeching of tires and for public drinking." C.A. 793198, 1983 WL 486780 (R.I. Super. Aug. 15, 1983)

In *Manuel J. Furtado, Inc. v. Sarkas*, a fifteen (15) day suspension was upheld where "an individual was shot in the leg in front of the licensed premises," "a shot was fired through a window of the premises," there were two additional fights on separate occasions as well as another disturbance, and additional violations included operating after closing hour. 1975 WL 174122 (R.I. Super. Mar. 11, 1975).

In *Schillers, Inc. v. Pastore*, a seventeen (17) day suspension was upheld where a disturbance occurred in the parking lot of an establishment that was "of such magnitude that the presence of the town's entire on-duty police force was required to restore order." 80-1459, 1980

WL 335979 (R.I. Super. July 16, 1980). Bottles were thrown at the police officers and "one officer testified that during that disturbance someone tried to remove the gun from his holster." Id. Significantly, [t]his was only one of a series of *nine* 'incidents'" at the establishment. Id.

The disorderly condition at issue here appears to be more severe than *JJAM* and *Curbside* because a sharp object injured a patron in the instant case. However, this case is not as severe as *Balch*, *Furtado*, or *Shillers*. *Balch* and *Schillers* involved 12 and 9 incidences, respectively. *Furtado* involved an individual and a window being shot at as well as several other disturbances. Therefore, suspension between 2 and 14 days would be appropriate and consistent with past cases. It was undisputed that the Appellant was closed between 12 and 14 days after the Council's revocation decision. Therefore, it is recommended that the suspension imposed be "time served."

However, the fact that the Appellant has served the suspension does not entirely dispose of this case. The Council demonstrated its genuine concern with the potential danger of future disturbances if this establishment remains open. The Council should be able to impose public safety conditions on the liquor license to address its concerns. Upon granting of the stay in this case, the Police Chief issued written conditions to be temporarily in effect during the stay period. This decision will not determine whether or not these temporary conditions are unreasonable as argued in the Appellant's motion to determine conditions unreasonable. However, it is recommended that the matter be remanded to the Council to hold a hearing to determine what permanent conditions, if any, are appropriate and necessary. At said hearing, the Appellant should have an opportunity to be heard on its opposition to any conditions sought to be imposed. Said hearing should be held as soon as possible, but no later than fifteen (15) days from the date of this Order.

VII. FINDINGS OF FACT

1. On March 4, 2014, the East Providence City Council voted to revoke the Class BV liquor license of DL Enterprises d/b/a East Bay Tavern based on an alleged failure to maintain an orderly establishment on February 6, 2014.
2. Pursuant to R.I. Gen. Laws § 3-7-21, Appellant appealed that decision to the Director of the Department.
3. The facts contained in Section V and VI are reincorporated by reference herein.

VIII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. 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.*
2. A violation of § 3-5-23(b) did occur on the premises.
3. Revocation of the license is excessive punishment.
4. It is reasonable to impose a suspension equaling the number of days the establishment has been fully closed due to the Council's revocation order.

IX. RECOMMENDATION

It is recommended that the Director order as follows:

1. The penalty that shall be imposed on the Appellant for the incident on February 6, 2014 is "time served," a suspension equal to the number of days the Appellant has been fully closed as of the date of this Order.

2. The matter is remanded to the Council to hold a hearing on imposition of any permanent public safety conditions on the liquor license. The Council shall hold such a hearing as soon as possible, but no later than fifteen (15) days from the date of this Order.
3. Until such time as a hearing on any permanent public safety conditions is held, the temporary public safety conditions imposed by the Police Chief during the stay shall remain in effect.

Date: 4/28/14

Jenna Algee, Esq.
Hearing Officer

ORDER

I have read the Hearing Officer's recommendation and I hereby (check one)

- ☑ Adopt
- ☐ Reject
- ☐ Modify

the recommendation of the Hearing Officer in the above-entitled Decision and Order.

Date: 28 April 2014

Paul McGreevy
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 28th day of April, 2014 that a copy of the within Decision and Order and Notice of Appellate Rights was sent by e-mail and first class mail, postage prepaid to -

William Maaia, Esq.
Law Offices of William C. Maaia & Associates
349 Warren Ave
East Providence, RI 02914
wcm@maaialaw.com

Robert E. Craven, Esq.
City of East Providence
Assistant Solicitor
7405 Post Road
North Kingstown, RI 02852
bob@robertecraven.com

and by email to Maria D'Alessandro, Deputy Director, Securities, Commercial Licensing and Racing & Athletics