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

D'Liakos, Inc. d/b/a Monet Appellant,	:	
v.	:	**DBR No. 12LQ088**
The City of Providence Board of Licenses, Appellee.	:	

DECISION AND ORDER

I. INTRODUCTION

On August 26, 2012, the Providence Board of Licensees (Board) held an Emergency Hearing to address an incident allegedly occurring at Monet Lounge on August 26, 2012. The Board ordered D'Liakos, Inc. d/b/a Monet (Appellant) to remain closed pending a Show Cause Hearing regarding the same incident, scheduled for August 29, 2012. On August 27, the City presented to the Board a second violation that had allegedly occurred on August 19, 2012. Though neither the City nor the Board had taken any action on the incident occurring a week prior, the two incidents were consolidated for purposes of determining whether the Appellant's license should be revoked. Following the full Show Cause hearing on August 29, 2012, the Board issued a decision on September 10, 2012 revoking the Appellant's liquor license for failure "to maintain supervision of its patrons to the extent necessary to maintain order in violation of Rhode Island General Laws Section 3-5-23" and for "caus[ing] or creat[ing] a nuisance or

disturb[ing] or caus[ing] to be disturbed the peace and quiet of the neighborhood in which the Licensee's business is located in violation of the City of Providence Code of Ordinances, Section 14-1."

The Appellant timely filed an appeal of the Board decision with the Department and this matter came before the undersigned in his capacity as Hearing Officer sitting as the designee of the Director of the Department of Business Regulation ("Department"). At the *de novo* hearing, the Board elected to rest on the certified Board record, admitted into evidence pursuant to R.I. Gen. Laws § 3-7-21(c),[1] rather than presenting its prosecution case directly before the undersigned through witnesses or other evidence. On behalf of the Appellant, owner and operator Dimitrios Liakos testified, subject to cross-examination by the Board. Counsel for both parties were given the opportunity to present oral arguments supporting their respective positions, subject to questioning by the Hearing Officer. After the hearing, the Department also received the Board decision and hearing transcripts regarding an incident in April 2012 that the Board referenced as grounds for its imposition of revocation in the instant matter.[2, 3]

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[1] The hearing officer described the contents of the certified Board record as follows: "Exhibit 1 is the individual documents in the record, statements certifying the record for the City. A letter dated August 27, 2012. This is the notice for the hearing for the revocation to the club owner. A letter dated August 28, 2012 from the City to the owner, again with notification for the Wednesday 29 hearing. A copy of a subpoena duces tecum issued to the club owner unsigned. The next document is a listing of history of violations of Club Monet, and the date of the document is September 11, 2012. The next document is the Appellee's objection to the motion for stay and supporting pictures and cases and what have you to the Appellant. The next package is the Chairman of the Board's decision to revoke the license of Club Monet with various exhibits attached to it. The next item is the hearing transcript dated August 29, 2012 from the full evidentiary hearing [hereinafter Board Show Cause Hearing Transcript]. The last item is dated August 2, 2012, which is the transcript from the emergency hearing that started the proceeding [hereinafter Board Emergency Hearing Transcript (August 26, 2012)]. That, in its entirety, will be considered City Exhibit 1." Department Hearing Transcript at 4-5.

[2] Testimony and argument on the April incident is documented in the following three transcripts: April 28 Emergency Hearing Transcript; April 30 Emergency Show Cause Hearing Transcript; and May 3 Emergency Show Cause Hearing Transcript. The Board objected to the Department's consideration of these transcripts, arguing that it did not fully prosecute the case because of a settlement agreement reached between the parties. Department Hearing Transcript at 34. In response to the objection, counsel for the Appellant pointed out that the Board transcripts include testimony of the two detail officers assigned to the

II. JURISDICTION

The Department has jurisdiction to decide appeals from decisions of local liquor licensing authorities under R.I. Gen. Laws § 3-7-21, § 3-5-21, and § 3-2-2, subject to relevant provisions of the Rhode Island Administrative Procedures Act, § 42-35-1 *et seq.*

III. ISSUE

The issue is whether the Department should uphold or reverse the Board's revocation of Appellant's License.

IV. MATERIAL EVIDENCE

1. August 25 - 26, 2012 Incident

The evidence adduced at hearing showed that, prior to closing time, August 25, 2012 began as "a regular night" at Club Monet.[4] Inside, owner Dimitrios Liakos and his security staff were equipped with headset radios used to communicate throughout operating hours.[5] No disturbances were reported over the security communications system.[6] Outside, two detail officers stood watch. Before closing time, the only notable observation the officers made was one individual ejected from the establishment who "exchanged words" with an individual thought to be an employee or promoter; he left, without causing any actual disturbance.[7] There was no testimony that the individual

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establishment on the night in question, arguably the most knowledgeable witnesses for the City's case. Id. at 34-35. Accordingly, it was suggested to the undersigned that it was unlikely that further testimony would have elicited a different version of the facts. Moreover, the Board specifically cited its characterization of the details of the incident in justifying its imposition of the revocation penalty. Board Decision at 5. Accordingly, in his *de novo* review of the penalty imposed by the Board, it is reasonable for the undersigned to take evidence of the April incident into account.

[3] Subsequent to the close of the Department hearings, the Hearing Officer met with counsel for both parties and suggested the parties consider negotiating or mediating a settlement agreement. The Board's counsel notified the undersigned that the Board had no intentions of proceeding with mediation.

[4] Board Show Cause Hearing Transcript at 32.

[5] Department Hearing Transcript at 7.

[6] Id.

[7] Board Show Cause Hearing Transcript at 32. One police officer testified that the individual returned later, walking towards the same employee, but promptly left following the officer's instruction. Id. at 51. The

posed any risk inside or outside the establishment at this time; presumably, he could have been ejected for a dress code violation or failure to pay.

It wasn't until after the club closed that one of the officers observed two suspicious subjects exiting the club with "mannerisms" indicating to him that they may cause a problem.[8] A promoter communicated his suspicions to the detail officer, without stating any specific cause or conveying any urgency.[9] The detail officer also testified that a member of Appellant's security team stated he was holding a group of patrons back.[10] At the Department hearing, Liakos testified that this is the regular practice of the club to stagger exiting patrons as a crowd control policy.[11] The suspicions and staggered exits aside, the Board did not present any evidence that the detail officers, promoter, or security guard observed any violent behavior or threatening words from these individuals as they exited or any time prior.

In response to his suspicions, the officer decided to "keep an eye" on the individuals. The officer did not attempt to inform the club owner, security personnel, or any other club employee of a potential problem.[12] Rather, the officer proceeded to instruct the individuals to leave the area. They hesitated, responding that they were just

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owner of the establishment testified to the contrary that he believed no one was escorted out of the club because, if they had, he would have been notified over the security system. Department Hearing Transcript at 13. Regardless, there was no allegation that the ejected individual was involved in the later incident at issue. Board Show Cause Hearing Transcript at 51.

[8] The officer testified: "From my knowledge of previous incidents, they looked like they were looking to start a problem from when they came out of the club. They were hanging around that their mannerisms made me immediately recognize them as somebody to keep an eye on throughout the time dispersing the patrons." Board Show Cause Hearing Transcript at 33.

[9] Id. at 34.

[10] Id. at 43.

[11] Department Hearing Transcript at 12.

[12] Board Show Cause Hearing Transcript at 40.

waiting for someone, the "birthday boy."[13] After being instructed to leave a second time, the individuals dispersed to the parking lot across the street from the club.[14]

Back across the street, as the officers continued on to stand watch outside the club, someone approached them stating "there possibly might be a disturbance in the parking [lot]."[15] Within about ten seconds, at 2:28 A.M., the officers heard gunshots coming from the parking lot.[16]

The testimony established that, as the officers ran towards the gunshots in the parking lot, two individuals hiding in front of a vehicle "both fell to the ground screaming," having been shot.[17] One of the officers "looked over to the right and saw two subjects getting into a vehicle."[18] The officer "ran over to the driver's side of the vehicle...and observed...the passenger of the vehicle, attempting to conceal a firearm."[19] Both subjects inside the vehicle were immediately apprehended.[20] There was no evidence that the firearm had been carried into the establishment. To the contrary, the record includes police testimony observing the regular practice of security personnel to wand all patrons with a metal detector at the point of payment.[21]

After the incident, both officers identified the victims as the two suspicious suspects they were "keeping an eye" on. One of the victims died; one victim suffered a leg injury. When interviewed by detectives at Rhode Island Hospital, the surviving victim was reported making a statement that "he was in the VIP section and you can only

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[13] Id. at 42.
[14] Id.
[15] Id. at 50
[16] Id.
[17] Id.
[18] Id.
[19] Id.
[20] Id.
[21] May 3 Emergency Show Cause Hearing at 8. *See* footnote 2.

get a bracelet when you're in the VIP section."[22] The same bracelet was found in the body bag of the deceased victim.[23] One suspect stated to a detective that both he and the co-suspect had patronized Monet's VIP section from approximately 12:30 A.M. to 2:15 A.M. on the evening in question.[24] The contents of the suspects' "trap bags" contained the same Monet VIP band that the victims had worn.[25]

The Board did not present any direct evidence at the Department hearing that identified what, if anything, occurred *inside* of the establishment that caused the outside parking lot disturbance. In response to the Hearing Officer's question "did the victim testify as to what happened in the club?" counsel for the Board indicated that the surviving victim "said he was at Monet, but did not say anything further."[26] The Department's independent reference to the Emergency Hearing Transcript included in the Board's certified record contained a critical piece of evidence, however. One detective testified that the surviving victim made a statement that "a minor verbal altercation [occurred] inside the nightclub just prior to leaving the nightclub," explaining that "[t]he victim of the gunshot wound characterized it as a minor verbal alteration that precipitated what happened out in the parking lot."[27] The record is entirely devoid of evidence of any physical disturbance inside of the establishment. Nor does the record contain any

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[22] Board Show Cause Hearing at 12. The City did not present a formal witness statement for the surviving victim. Id. at 25. There is disagreement on the record as to whether the witness was medicated and any effect of such medication on his ability to make an accurate statement. For example, while one police officer testified at the Board Show Cause Hearing that the witness "didn't appear to be drugged," (Transcript at 26), counsel for the Appellant represented that the witness may have been "heavily medicated" at the Department Hearing (Transcript at 38).
[23] Board Show Cause Hearing Transcript at 21.
[24] Id. at 66.
[25] Id. at 13. "Trap bags" contain any jewelry, earrings, phones, watches, etc. on the suspect's person on arrest. From his prior experiences as detail officer at Club Monet, one officer also explained that on 21-plus nights at the club, only VIP patrons wear Monet bracelets. Id. at 35.
[26] Department Hearing Transcript at 38.
[27] Emergency Hearing Transcript at 14.

evidence that would have placed either security personnel or police officers on notice that such a tragic event would occur in the parking lot that evening.

2. August 18-19, 2012 Incident

Prior to closing time on August 18th, "there were no disturbances that [the detail officer] was aware of," either inside the club or the outside vicinity.[28] The only notable observation made by either detail officer prior to closing was that one individual was escorted out at approximately 1:15 A.M.[29] There was no testimony that the individual posed any risk inside or outside the establishment at this time; presumably, he could have been ejected for a dress code violation or failure to pay.

It was not until 20 minutes after closing (2:20 A.M.) that a disturbance occurred in the parking lot. Club personnel were first to identify the problem, immediately running to the parking lot across the street from their post to attempt to disperse the crowd.[30] Following the bouncers, the detail officers "saw there was a large disturbance in the parking lot across the street from Monet."[31] In the parking lot, "40 to 60 people were involved" in "words being exchanged," "physical altercation, rocks being thrown, cars being kicked."[32] Working together, the bouncers and officers timely dispersed the parking lot crowd within 10-15 minutes.[33]

One of the detail officers recognized one of the individuals involved to be the same individual that had been previously escorted from the premises.[34] There was no indication the Monet employees or the officers would or could have been aware of the

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[28] Board Show Cause Hearing Transcript at 85.
[29] Id. at 85.
[30] Id. at 81.
[31] Id. at 70-71.
[32] Id. at 83.
[33] Id. at 75.
[34] Id. at 72.

return of this individual to the parking lot. The same detail officer also recognized several individuals involved in the fight as being affiliated with gang activity.[35] These individuals were not recognized by external signs such as gang symbols, but rather from the officer's work as a Housing Officer at the Manton Heights Housing Development. Monet management was not notified that these patrons were gang-affiliated prior to admittance or any time thereafter.[36]

Around 2:40 A.M., 40 minutes after the establishment had been closed to patrons, two of the individuals involved in the earlier disturbance returned in a motor vehicle and approached two bouncers who were disposing of garbage, "exchanging words."[37] The individuals told the officer that they felt that the bouncers had assaulted them while attempting to address the earlier parking lot disturbance.[38] Escorting the individuals back to their vehicle, the officer observed a firearm on the front seat floor, seized it, and then proceeded to arrest the possessor.[39]

Once again, the Board did not present any direct evidence at the Department hearing that identified what, if anything, occurred *inside* of the establishment that caused the outside parking lot disturbance. Neither was there was there any evidence that the firearm had been carried into the establishment. To the contrary, the record includes police testimony observing the regular practice of security personnel to wand all patrons with a metal detector at the point of payment.[40]

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[35] Id. at 74.
[36] Department Hearing Transcript at 29.
[37] Board Show Cause Hearing Transcript at 72-76.
[38] Id. at 89.
[39] Id. at 76.
[40] May 3 Emergency Show Cause Hearing at 8.

V. DISCUSSION

The Department has the broad authority to "confirm or reverse the decision of the local board in whole or in part" under R.I. Gen. Laws § 3-7-21(a). Although the standard of review of the board's decision is not explicitly delineated by statute, judicial interpretation of § 3-7-21 in light of the legislative intent to vest the Department with broad discretion as a "superlicensing authority," imposes a "de novo" review standard. *Hallene v. Smith*, 98 R.I. 360, 363 (R.I., 1964). When the appeal "transfer[s] or remove[s] a cause from the jurisdiction of a local board to that of the state tribunal," the Department exercises its independent judgment. Id. at 365.

In a *de novo* appeal of a liquor license revocation decision, the Board has the burden of proof, the board must first establish that the licensee a) violated a law or license condition, b) permitted a violation of law to occur on its premises, or c) permitted the conditions on the premises to become "disorderly." R.I. Gen Laws § 3-5-21; § 3-5-23.[41] The second element of the Board's case is causation. When the violation occurs inside the premises or by direct action of the licensee, showing a causal connection between the licensee and the violation is simple. However, when a disturbance occurs outside of the premises, it becomes more difficult to demonstrate that the outside conduct originated inside of the establishment.

Even if the statutory violation and causation are proven, revocation is not automatic. Rather, the appropriate disciplinary measure is a discretionary determination that balances the severity of the violation with disciplinary options, considering any

[41] "The burden is on the officer or board to prove the facts which constitute the cause which are alleged as grounds for the revocation or suspension of a license, and not on the licensee." 48 C.J.S. Intoxicating Liquors § 243. In other words, "[u]ntil the licensing authority gives substantial evidence of the violation of the liquor laws by a licensee, the licensee is not obliged to prove his or her innocence." Id.

aggravating or mitigating factors. Accordingly, the Appellant may prevail by showing that "the penalty imposed is too severe for the particular violation." 48 C.J.S. Intoxicating Liquors § 243.

1. R.I. Gen Laws § 3-5-21 and § 3-5-23

Under R.I. Gen. Laws § 3-5-21(a), a license is subject to discipline "for breach by the holder of the license of the conditions on which it was issued or for violation by the holder of the license of any rule or regulation applicable." The Board did not present any evidence that the licensee or its agents directly violated any provision of law. Rather, the evidence centers on the conduct of Monet's patrons outside of the establishment. Under R.I. Gen. Laws § 3-5-23(b), disciplinary action is justified "if any licensed person permits the [premises] to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood...or permits any of the laws of this state to be violated in the neighborhood." While § 3-5-21(a) addresses violations of law or conditions directly committed by the licensee, § 3-5-23(b) imposes responsibility on the licensee not only for its own conduct, but also for the conduct of its patrons that amounts to a violation of law or causes disorderly conditions in the neighborhood.

With respect to discipline for "permitting" violations of law to be committed on the premises, it is said that the "licensee is absolutely accountable for any violations of the law which occur on his premises." *Manuel J. Furtado, Inc. v. Sarkas*, 74-674, 1975 WL 169939 (R.I. Super. Mar. 13, 1975)(citing *Vitali v. Smith,* 105 R.I. 760 (1969)). This absolute accountability stems from the licensee's "affirmative obligation and duty to supervise his premises to see that the laws are not violated." Id. An immediate "breach of the licensee's duty" "results when a violation of the law occurs on the premises." Id.

In evaluating the breach, "what is all-important and decisive is whether there has been a violation of the law - not whether supervision was provided." *Vitali v. Smith*, 105 R.I. 760, 254 A.2d 766 (R.I. 1969). "[E]ven though the responsibility may be onerous, a licensee agrees to assume such an obligation by its acceptance of the license." *Shillers Inc. v. Pastore,* 419 A.2d 859 (R.I. 1980).

With respect to discipline for "permitting" the premises to become "disorderly" so as to "annoy and disturb" the neighborhood, an equally onerous duty has been imposed on the licensee. Once again, the "licensee assumes an obligation to affirmatively supervise the conduct of his patrons," the breach of which makes the licensee "absolutely accountable." *Cesaroni v. Smith*, 202 A.2d 292, 295-96 (1964). Black's Law Dictionary defines "disorderly conduct" as "[b]ehavior that tends to disturb the public peace, offend public morals, or undermine public safety." 9th ed. (2009).

The two incidents upon which the Board's revocation decision was based clearly constitute "disorderly conduct" within the meaning of the statute. The term would obviously include incidents that create a public safety concern such as injuries sustained by patrons or disturbances that command attention of police force.[42] The requisite "annoy[ance] or disturb[ance]" to the persons residing in the neighborhood is a flexible standard that may be established by testimony of the neighbors, by anonymous police complaints,[43] or by other evidence of the effect of an incident on community safety.[44]

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[42] The term "disorderly" also refers to "conditions in the neighborhood of like character to conditions that would result from maintenance of a nuisance therein." *Cesaroni*, id. Reference to the term "nuisance" illustrates that the term includes behavior that offends the sensibilities of the neighborhood in an extreme manner, such as through excessive noise in a residential area, public urination, chronic littering, etc.

[43] *Schillers, Inc. v. Pastore*, 80-1459, 1980 WL 335979 (R.I. Super., 1980).

[44] *PAP Restaurant, Inc. d/b/a Tailgate's Grill and Bar v. Town of Smithfireld, Board of License Commissioners*, DBR 03-L-0019 at 24 (May 8, 2003)("A licensee who generates such an effect on a local police force cannot be heard to say it did not disturb the surrounding neighborhood."); *Chalkstone Steakhouse d/b/a Breakpoint Café v. City of Providence Board of Licenses*, LCA-PR-05-33 at 13 (April 20,

2. The Causation Requirement

It is clear that the duty to supervise the licensee's establishment is at its height within the perimeter of the establishment. The obligation is not automatically cut off at the entrance or exit, however. The licensee may be subject to discipline when "disorderly incidents occurred just outside a licensee's premises and had their genesis within." *Edge-January, Inc. v. Pastore*, 430 A.2d 1063, 166 (R.I. 1981). The licensee will not be held "absolutely accountable"[45] for conduct entirely outside of the premises unless the Board presents evidence that gives rise to an inference of a causal link between something inside the Appellant's premises and the outside disturbance.

Some Rhode Island liquor licensee liability causation cases have involved chronic nuisances in residential neighborhoods such as consistent noise, public urination, and litter witnessed by multiple neighbors on a nearly nightly basis. In contrast, other causation cases address one or two *discrete* events occurring outside of the establishment. In these discrete event cases, the causal evidence is more specific. The following analysis reviews all five cases cited by the Board in its decision and through counsel at the *de novo* hearing to distinguish between the evidentiary records in the chronic nuisance cases and the discrete event cases.[46]

Cesaroni v. Smith is first in the line of causation cases cited by the Board addressing activities occurring outside of the licensee's premises. 98 R.I. 377 (R.I., 1964). In *Cesaroni*, the owner acquiesced in patron behavior *inside* of the establishment

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2006)(an "incident forc[ing] the police department to commit additional resources to the establishment, jeopardize[es] the safety of other neighborhoods.")

[45] *Vitali v. Smith*, 105 R.I. 760, 762, 254 A.2d 766, 768 (R.I., 1969)

[46] The cases relied upon include both non-renewal and revocation of liquor licenses. Renewal cases are applicable to revocation decisions because of the "for cause" standard for renewal includes grounds for revocation under 3-5-21 and 3-5-23. *Chernov Enterprises, Inc. v. Sarkas*, 109 R.I. 283, 284 A.2d 61 (R.I. 1971).

that the court found to have precipitated the *outside* "disorderly" conduct. The inside patron activity was described as "boys dancing with boys, kissing, embracing; girls dancing with girls, kissing and embracing." Id. at 382. As testified to by neighbors, "at and 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." Id. at 382. In a decision reflecting historic animus against homosexuals, the licensee was held liable for the conduct of patrons outside because it was believed that "the association of such people in the circumstances set the stage" for the disorderly conduct. Id. at 384.[47] The decision was premised on the court's finding of a causal connection between inside acts that the owner acquiesced to and outside "disorderly" conduct.

In *Edge-January*, "[u]pon review of the testimony presented, the trial justice determined that there was legal, competent evidence from which it could be reasonably inferred that 'The Edge' and 'January's' were the catalysts that brought about the disruptive incidents in the neighborhood and, further, that the series of disorderly activities in the neighborhood generated from the establishments in question." Id., 430 A.2d at 1066. The inference that the disorderly conduct generated from the establishment was supported by extensive evidence from neighbors describing a chronic nuisance in the residential neighborhood:

> "Essentially, the neighbors testified that there was excessive noise in the area, that young people urinated on their property, that people drank beer in cars that were

[47] The opinion explained: "His acquiescence in the conduct of his patrons permitted the licensed premises to become attractive as a gathering place for deviates of both sexes, a virtual house of assignation for perverts;" *i.e.*, he "induced these unfortunate people to flock to a place where they would be assured that their conduct would be tolerated." Id.

> parked illegally in front of said property, and that people smashed bottles and generally littered the neighborhood. Some neighbors testified that they were often awakened by the loud yelling and the tooting of automobile horns that occurred around closing time at petitioner's establishments. All of the neighbors testified that the problems outlined had been going on for a number of years." Id. at 1064.

In *A.J.C. Enterprises, Inc. v. Pastore*, the Rhode Island Supreme Court restated the standard that "it can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within." 473 A.2d 269, 275 (R.I.,1984.) Like *Cesaroni* and *Edge-January*, *A.J.C.* involved a chronic nuisance created by the licensee's patrons outside the premises. "Several 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." Id. Because "[t]hese occurrences did not take place before Back Street opened," the court found it "reasonable to infer from the evidence that the undesirable activities that occurred outside and around Back Street had their origin within." Id.

Cesaroni, *Edge-January*, and *A.J.C.* are distinguishable from the instant case. The court in those three cases made causal inferences based on evidence from neighbors about chronic conditions such as noise, public urination, sexual activity, etc. From a practical standpoint, it would be difficult to require these neighbors to identify any activity within the establishment itself. Yet taking all of their testimony together, it can be inferred that the establishment was the "catalyst" for the nuisance. In contrast to the chronic nuisance cases, the causation cases dealing with a discrete incident outside the establishment rely on more direct evidence connecting the incident to something inside

the premises. Before revoking or denying renewal of a license for discrete event, the cases point to more compelling causation evidence.

In *Manuel J. Furtado, Inc. v. Sarkas*, "the evidence and the reasonable inferences therefrom support[ed] the trial justice's finding that the[] disturbances commenced within the licensed premises and *spilled out onto the sidewalk.*" 118 R.I. 218, 224 (R.I., 1977). The causal inference was not drawn out of thin air, however. Instead, the court relied on evidence that individuals with baseball bats were observed as they were exiting the establishment and immediately engaging in a brawl outside, literally "spilling" outside of the establishment. "During one disturbance...the police arrested seven people who came out from The Helm bearing baseball bats;" a second disturbance was evidenced by "the arrest outside The Helm of a disorderly person who had been inside the establishment that night." Id. at 224.

In *Stage Bands, Inc. v. Department of Business Regulations*, the Superior Court recognized that causation "can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within." 2009 WL 3328508 (R.I. Super., 2009). Applying that standard, the court emphasized that the victim "engaged in an altercation *inside* the club and later, outside the club, engaged in another altercation" leading up to the outside shooting. Id. (*emphasis supplied*). Based on this evidence of the inside altercation, the court held that "it is more than reasonable for the DBR to conclude that the fights culminated inside [the establishment]."

Additional cases not cited by the Board confirm that revocation or non-renewal for a discrete event has been premised on more specific evidence on inside incidents than the nuisance "catalyst" cases. In *J. Aliosio Enterprises, Inc. v. Department of Business*

Regulation, the outdoor shooting was found to have its "genesis within" the premises where two patrons witnessed the shooter push the victim twice inside of the establishment before later shooting the victim five times outside. 2001 WL 1005865 at 9 (R.I. Super., 2001). *In re Cardio Enterprises d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, "the evidence [was] clear that there was an altercation that began in the Bar before spilling outside" where there was testimony of a fight near the pool table inside and police observed blood on the pool table and trailing from the entrance to the victim's body found outside the establishment. DBR No. 06-L-0207 at 16-18 (March 28, 2007).

With regards to the August 25-26 incident, the Board produced and relied upon circumstantial evidence at the Department hearing. The Emergency Hearing transcript contains a single item of evidence that directly addresses the critical issue of the "genesis within." One detective testified that the surviving victim stated that "a minor verbal altercation [occurred] inside the nightclub just prior to leaving the nightclub."[48] This testimony is corroborated by evidence that both suspects and both victims had Monet VIP bracelets on their person or in their possession. Nothing in the promoter's or security personnel's statements or anything else in the record indicates anything more severe than the "minor verbal altercation."

With regards to the August 18-19 incident, the only evidentiary item in the record with potential to create a nexus between the outside disturbances and the inside of the premises is the report of an individual having been ejected by club personnel at 1:15 A.M, who was again observed over an hour later in the parking lot altercation. The fact that the individual patronized the establishment, was ejected, and later became involved

[48] Emergency Hearing Transcript at 14.

in an outside altercation, without more, does not establish the requisite causal connection. There is no testimony that his ejection was the result of an altercation inside of the establishment. To create such an inference would have negative policy implications. The ejection of patrons necessary to avoid conflict inside of an establishment is a sound management tool that should not be discouraged by attaching a presumption of internal problems when exercised by club management.

3. Appropriate Disciplinary Measure

Though the Board did present sufficient evidence to substantiate a finding that the Appellant permitted the premises to become disorderly within the meaning of R.I. Gen. Laws § 3-5-23 on August 25-26, it does not necessarily follow that the disciplinary measure imposed – revocation – was justified under the circumstances. "There are two components to an administrative decision – a determination of the merits of the case, and a determination of the sanction. While the former component is mainly factual, the latter involves not only an ascertainment of the factual circumstances, but also the application of administrative judgment and discretion." *Jake and Ella's, Inc. v. Department of Business Regulation*, 2002 WL 977812, *5 (R.I. Super., 2002). In a *de novo* appeal, the Department exercises its independent "administrative judgment and discretion" in fashioning an appropriate disciplinary remedy. *See Hallene v. Smith*, 98 R.I. 360 (R.I. 1964).

"Revocation of a...liquor license essentially functions as the death penalty in the context of license violations. Because it is such a harsh penalty, it should be reserved for only the *most severe situations*." Id. at 6 (*emphasis supplied*). A death in the vicinity of a liquor establishment, though inarguably tragic, is not automatic grounds for revocation.

As it was said in a prior Department case, the "issue is whether the actions and occurrences surrounding the...resulting death justify the revocation." *In re Cardio Enterprises*, id. at 16.

The requisite severity may be established by a single occurrence that can be directly traced to management's violation of law or license condition. In contrast, when the record involves the Appellant's indirect liability for conduct of its patrons outside the establishment, past revocation and non-renewal cases have involved (a) more severe incidents constituting the "genesis within," and/or (b) chronic nuisance or additional violations on the premises.

The conduct constituting the "genesis within" in *J. Aliosio*, *supra*, was a physical interaction that management should have been alerted to: two patrons witnessed the shooter push the victim twice inside the premises. *In re Cardio Enterprises*, *supra*, the severity of the inside altercation was evidenced by fresh blood on a pool table in the immediate vicinity of the fight. Further, most "disorderly conduct" revocation cases (or analogous "for cause" renewal cases) present "repetitive, chronic disorderly activity, occurring over a sufficiently lengthy time period and corroborated by a large number of witnesses." *J. Aloisio Enterprises, Inc., d/b/a Club Confetti v. City of Providence, Board of Licenses,* LCA-PR-00-01 at 21 (January 5, 2001)(comparing the facts of Confetti to *Edge-January* and *A.J.C. Enterprises*). For example, in addition to the shooting, the Department record in *J. Aloisio Enterprises* included "disorderly activity manifest[ing] itself...in the form of noise from persons and autos, illegal parking, public urination, smashing of bottles, litter, public displays of sexual activity," "fighting among patrons," "open defiance and threatening of police, the assaulting of club security officials, and

police officers, and a shooting." Id. at 21. See also *Edge-January* and *A.J.C. Enterprises*, *supra*. Moreover, the record in *Furtado v. Sarkas*, in addition to the two discrete outside fights involved, included testimony that police found weapons, needles, and syringes on the floor inside the establishment. Id., 118 R.I. at 221. The evidence in these cases bears heavily on the safety of the establishments and their patrons, indicating that management failed to maintain control.

In contrast to these cases, the only evidence of disorderly conduct inside the Appellant's premises in the instant case is a "minor verbal altercation." There was no testimony of physical violence; to the contrary, the owner of the establishment testified at the Department hearing that had any physical altercation been observed, it would have been broadcasted over the security radio system to which he was connected.[49] In a dark and loud club environment, management could not have been expected to been alerted to a "minor verbal altercation." Moreover, even if the "minor verbal altercation" was observable, it would not have put a reasonably-minded security official on notice that a tragic shooting would result from the words exchanged. In absence of direct violation of law or license condition, more compelling "genesis within" evidence, additional inside incidences, or chronic nuisance testimony, the facts in the instant case do not amount to the "most severe situation" in which the "death penalty" is the appropriate disciplinary sanction. *Jake and Ella's*, id. at 6.

In addition to reviewing the specific charges relied upon by the local licensing authority, the Department may also evaluate any factors of "aggravation and mitigation" it deems appropriate. *Santos v. Smith*, 99 R.I. 430, 433 (R.I., 1965). For example, the Department may consider "the number and frequency of the violations, the real and/or

[49] Department Hearing Transcript at 10.

potential danger to the public posed by the violation, the nature of any violations and sanctions previously imposed, and any other facts deemed relevant in fashioning an effective and appropriate sanction." *Jake and Ella's*, id. at 6.

One of the factors of "aggravation and mitigation" that the Department may consider is the *mens rea* of the Appellant's management. The Department has "great reservations about the ...imposition of the most severe penalty allowed by law" (revocation), where there is "reason to believe the violation was more the result of negligence rather than malicious intent." *Musone v. Pawtucket Bd. of License Com'rs*, 1984 WL 560365, *2 (R.I. Super., 1984). Stated reversely, imposition of revocation is most appropriate where the Appellant "abdicate[s] [its] responsibilities as a licensee." *In re Cardio Enterprises*, *supra*, id. at 22.[50]

In the instant case, it is clear that neither the Appellant nor the detail officers could have reasonably foreseen that a shooting would occur because of a "minor verbal altercation" inside. No allegation has been made that the Appellant's conduct affirmatively contributed to the conduct of the patrons outside of the establishment. The Board did not present any evidence suggesting what, if anything, the Appellant could have done differently to prevent or mitigate the parking lot incident. To the contrary, the record includes evidence that Liakos has taken an active role in management over the last ten (10) years.[51] Absent any indicia of fault on the Appellant's part, revocation is an unduly harsh penalty for the Appellant's misfortune to have been patronized by the suspects on the night in question.

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[50] For example, *In re Cardio Enterprises*, *supra,* management fled the scene of the bar despite knowledge that someone had been hurt inside, demonstrated reckless disregard for the safety of patrons.

[51] Department Hearing Transcript at 6. *See also* May 3 Emerency Show Cause Hearing Transcript at 6 (testimony from one detail officer that Liakos was on premises and spoke to the officer every time the testifying officer had been detailed at Monet).

Another factor of "aggravation and mitigation" that the Department may consider is the Appellant's violation history, including the "the number and frequency of the violations" and "the nature of any violations and sanctions previously imposed." *Jake and Ella's*, id. at 6. At least in theory, an appellant's violation history could be so egregious as to warrant revocation even in absence of the "most severe circumstances" and *mens rea* surrounding the specific charge that lead to the revocation proceedings. The Board has not made such a demonstration in this case, however. Addressing the magnitude of the sanction warranted, the Chairman of the Board conclusively made reference to the Appellant's violation history over the past three years: "inability of this Licensee to maintain supervision of its patrons, operating in contravention of the public interest, violating the conditions of its license, sale of alcohol to underage persons and most recently,...a major disturbance at the premises on April 28, 2012." [52]

Department precedent has instructed the Board, in drafting its decisions, to provide "discussion about how the sanction was reached, what factors were considered, [and/or] how the sanction compared to prior sanctions levied by the Board for similar offenses" "which the Department can draw upon to determine if the sanction in [the] case is appropriate." *Café Renaissance v. City of Providence, Board of License*, DBR No. LCA-PR-05-52 at 5-6 (January 2, 2007). Setting aside the April 28 incident, the Board did not include in its analysis any reliable indication of the nature or severity of the violations which it urges justify the license "death penalty." In absence of any detail as

[52] The Decision refers to violations "since April 2011." The most recent violation prior to April 2011 occurred in January 2009, well over three years ago. Limiting consideration of a licensee's history to violation occurring within the past three years is consistent with the legislative determination that violations occurring three years ago are sufficiently remote to exclude them in determining whether a subsequent violation is fined as a first or second offense. R.I. Gen. Laws 3-5-21; *J. Aliosio Enterprises, Inc. v. Department of Business Regulation*, 2001 WL 1005865 at 2 (R.I.Super., 2001).

to the egregiousness of the violation history, the record of the Appellant's Violation History gives rise to the inference that that the history is not as "aggravating" as the Board implies.

Under R.I. Gen. Laws § 3-5-21(b), the Board is authorized to impose a maximum $500 fine for each count that is a first offense and a maximum $1,000 fine for each count that is a subsequent offense. Accordingly, the Board was authorized to impose up to $3,500 during the period between April 2011 and the April 28 incident.[53] The fact that the Board, presumably after careful review of all the details of the charges, decided to instead impose fines totaling $1,600 indicates that the incidents were not so egregious as to constitute an aggravating factor justifying revocation in this case.[54]

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[53] The Violation History reports three violation dates between April 2011 and the April 28, 2012 incident. For 4/2/2011, a $500 fine could have been assessed. Of the three counts for that violation date, one count was a first offense and the remaining two were dismissed. For 12/11/2011, a $2,000 fine could have been assessed. Of the three counts for that violation date, two represent first offenses and one represents a subsequent offense. For 4/5/2012,a $1,000 fine could have been assessed. The two counts for that violation date were considered "first" offenses because of three-year statutory language.

[54] Neither does the earlier history (more than 3 years ago), even if it had been considered in the Board's decision, rise to a level justifying revocation. The violation history presented by the Board does not indicate whether or not any violations occurring in the first three years of business (2002, 2003, or 2004). For 2005, of three listed violation dates, the Board only imposed a penalty for incidences surrounding the last date of 5/19/2005. The fact that the Board imposed a total fine of $750 for 5/19/2005, rather than the statutorily authorized $1,500 for three first counts of underage drinking also demonstrates lack of egregiousness. The Appellant had no violations in 2006 or 2007. For 2008, the Appellant's record consists of two violation dates (3 counts) for "disturbances/illegal activity." One count is identified as "two subjects fighting;" however it is not evident whether this incident occurred within or outside the premises or whether the fight was minor or severe. No information is provided as to the nature of the other two counts for 2008. Nevertheless, it is evident that the Board could have imposed $ 1,500 for the three counts, assuming all three were first offenses. Instead, the Board only imposed a total of $300 during the 2008 calendar year. In January 2009, the Appellant had one count each for sale by bottle, sale to underage patron, possession by underage patron, and an unidentified violation of a Class N condition. Even assuming all four counts were first offenses, the Board could have imposed a total of $2,000 in fines, but instead fined the Appellant at $1,000. No violations occurred in 2010.

The Board's decision as it relates to the April 28 incident mischaracterizes it as a "major disturbance."[55] The following summary of the facts demonstrates that the prior incident is not so egregious as to constitute an aggravating factor justifying revocation:

> Prior to closing time, the two detail officers stationed at Monet did not observe any disturbances.[56] In fact, the only notable observation earlier in the evening was that a female patron was "just escorted out the front door, and [security] closed the door behind her, told her she had to leave," without "problems" or putting their "hands on her."[57] There was no testimony that the individual posed any risk inside or outside the establishment at this time, *i.e.* she could have been ejected for a dress code violation or failure to pay.
>
> Later, at closing, as the detail officers watched patrons exiting, a Monet employee approached to ask for assistance inside.[58] Upon entrance into the establishment, no disturbances were noted in the foyer or the main bar area. [59] In the VIP section, four people were observed fighting, two throwing a punch; two throwing a bottle or glass container; and one of the four involved kicked.[60] A group of around 50-60 were in the vicinity of the fighting, but were not observed to be directly involved in it.[61] The disturbance lasted 5-10 minutes and the entire establishment was cleared of patrons within a total of 10-15 minutes.[62] One patron sustained a laceration to the left shin, and, another, a laceration to the face and chest, injuries from the glass material that had been thrown before the disturbance had been quelled.[63]

The Department's administrative enforcement history has established a "long line of Department cases regarding progressive discipline and upholding the same." *El Chapin Restaurant v. City of Central Falls Liquor Board*, DBR No. 08-L-0274 at 3. The April 28 violation was addressed through a settlement agreement between the Appellant

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[55] This mischaracterization appears to be premised on reliance on Emergency Hearing testimony, which is tantamount to a grand jury proceeding in which the Appellant did not have a right to be present or to cross-examine witnesses. The testimony presented at the Show Cause hearings following the Emergency Hearing clarifies the facts surrounding the incident, diminishing the apparent severity of the disturbance.
[56] May 3 Emergency Show Cause Hearing Transcript at 12.
[57] Id.
[58] Id. at 14.
[59] Id. at 16.
[60] Id. at 18-19.
[61] Id. at 21. Though an officer testified that "there was pushing, yelling," his testimony was inconclusive as to any actual involvement with the fighting, i.e. they could have just been pushing to get away from the four fighting individuals.
[62] May 3 Emergency Show Cause Hearing Transcript at 25.
[63] April 20 Show Cause Hearing Transcript at 9.

and the Board, the terms of which consisted of a $2,000 fine, 15 day closure, security personnel attire to distinguish them from patrons, and 3 person police detail and ban on patrons under 21.[64] The Appellant has no history of any other suspension in the seven year documentation provided by the Board.

In light of the progressive discipline policy, the Appellant's *mens rea*, lack of egregious history, and comparative severity to other revocation/non-renewal cases, suspension is the appropriate remedy. The Appellant's closure from the August 26 emergency hearing to the date of this order functioned as a suspension for the cited disorderly conduct that occurred in the parking lot across the street from the Appellant's establishment. The served suspension sends a strong message to both the Appellant and its patrons that violent conduct will not be tolerated. Accordingly, the effect of this decision is to re-instate the license.

"[I]n fashioning an effective and appropriate sanction," the Department strives to address "the real and/or potential danger to the public posed by the violation." *Jake and Ella's*, id. at 6. The public safety concern arising when a shooting occurs outside of a liquor license establishment should not be minimized. The Board argues that "public safety strongly warrants keeping the club closed at this time to avoid repeat incidents."[65] However, the Board did not present any evidence that repeat shootings in the parking lot across the street would be likely or probable. Rather than permanent revocation, the

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[64] Board's Letter of Decision (May 8, 2012). It appears that this settlement was precipitated by the evidence of non-severity at the Show Cause hearing, the fact that the premises had already been closed for several days pending the Show Cause hearing, and the Appellant's desire to re-open on a date for which an entertainer had already been booked at great cost to the business. Department Hearing Transcript at 50 (Counsel for the Appellant: "The only thing we were trying to do was get back open for that Wednesday because we had a DJ for $15,000 flying in from the United Kingdom. When the testimony came out, now the City was able and wanted to come down and cut a deal.").

[65] Department Hearing Transcript at 48.

public safety concerns in this case are reasonably addressed by the punishment of suspension and the imposition of the license conditions described below.

The Department has the same broad authority to impose conditions on reinstatement following suspension as it does to impose conditions on the original grant of licenses. In *Thompson v. East Greenwich*, the Rhode Island Supreme Court discussed the power of local licensing boards to place conditions on liquor licenses. 512 A.2d 837 (R.I., 1986). The Department has the same authority to impose conditions on licenses because appeal to the Department "transfer[s] or remove[s] a cause from the jurisdiction of a local board to that of the state tribunal." *Hallene v. Smith*, 98 R.I. 360, 365 (R.I., 1964).[66]

Both incidents upon which the Board's revocation decision was based involved disturbances in the parking lot across the street at the time of closing. The presence of security personnel, like "police presence...would deter problems...from occurring." *Musone v. Pawtucket Bd. of License Com'rs*, 1984 WL 560365 (R.I.Super., 1984). Therefore, safety in the parking lot can be directly addressed by placing the following conditions on reinstatement of the license:

1. Two (2) private security personnel shall be posted in the parking lot in shifts starting fifteen (15) minutes prior to scheduled closing and ending when all patron vehicles have left the parking lot.
2. The security personnel shall wear uniforms clearly bearing the term "Security."
3. Floodlights shall be used to illuminate the parking lot across the street to provide adequate lighting for security purposes.

4. Conditions 1 –3 shall be applicable to nights on which the establishment is operating, not closed. Conditions 1 –3 shall not be applicable to a "private function." "Private function" shall be defined as the paid privilege to exclusive use of the facility to entertain no more than 150 invited guests, *i.e.* a wedding reception, office holiday party, etc.[67]

VI. Findings of Fact

1. Sections I-V of this decision and order are incorporated herein as findings of fact.

VII. Conclusions of Law

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-7-21, § 3-5-21, and § 3-2-2, subject to relevant provisions of the Rhode Island Administrative Procedures Act, § 42-35-1 *et seq.*
2. The August 25-26 and August 18-19 incidences constitute "disorderly conduct" within the meaning of R.I. Gen. Laws § 3-5-23(b).
3. The outside disorderly conduct on August 25-26 had its "genesis within," thus satisfying the causation requirement set forth in the *Cesaroni v. Smith* line of cases discussed in section V(2) herein.
4. Upon *de novo* review, it is within the Department's broad discretion to fashion a disciplinary remedy that is reasonable under the circumstances, considering various factors of aggravation or mitigation it deems fit.

[67] Counsel for the Appellant represented that the Appellant engages in four business formats: Hip Hop Night, International Night, College Night, and private functions. Though counsel raised the Appellant's willingness to eliminate Hip Hop night as a condition of reinstatement, the lack of distinguishing details between Hip Hop Night, International Night, and College Night prevents the undersigned from drafting an enforceable license condition to that effect. However, because a "private function" is a more commonly understood business format, drafting an enforceable license condition distinguishing private functions is reasonable.

5. The served suspension period, coupled with the recommended conditions regarding parking lot safety, reasonably address the public safety concerns raised by the Board.

VIII. Recommendation

It is recommended that the Board be ordered to reinstate Appellant's liquor license, subject to the following conditions:

1. Two (2) private security personnel shall be posted in the parking lot in shifts starting fifteen (15) minutes prior to scheduled closing and ending when all patron vehicles have left the parking lot.
2. The security personnel shall wear uniforms clearly bearing the term "Security."
3. Floodlights shall be used to illuminate the parking lot across the street to provide adequate lighting for security purposes.
4. Conditions 1 –3 shall be applicable to nights on which the establishment is operating, not closed. Conditions 1 -3 shall not be applicable to a "private function." "Private function" shall be defined as the paid privilege to exclusive use of the facility to entertain no more than 150 invited guests, *i.e.* a wedding reception, office holiday party, etc.

As recommended by:

Date: 11/7/2012

Louis A. DeQuattro, Jr., Esq., CPA
Hearing Officer
Deputy Director & Executive Counsel

I have read the Hearing Officer's recommendation and I hereby (circle one) adopt, reject or modify the recommendation of the Hearing Officer in the above-entitled Decision and Order of Remand.

Date: 7 Nov 2012

Paul McGreevy
Director

Entered as an Administrative Order No.: -12-06/this 7th day of November, 2012.

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 7th day of November, 2012 that a copy of the within Order and Notice of Appellate Rights was sent by e-mail and first class mail, postage prepaid to -

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