STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX, BLDG 68-69
1511 PONTIAC AVENUE
CRANSTON, RI 02920

Salacruz LLC d/b/a Sky Lounge, Appellant,	:	
v.	:	**DBR No.: 14LQ046**
City of Providence, Board of Licenses, Appellee.	:	

DECISION

I. INTRODUCTION

On August 20, 2014, the City of Providence, Board of Licenses ("Board" or "City") revoked the liquor license ("License") of Salacruz LLC d/b/a Sky Lounge ("Appellant" or "Sky"). Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision by the Board to the Director of the Department of Business Regulation ("Department"). By order dated September 3, 2014, the Department denied the request for a stay of the revocation. Pursuant to R.I. Gen. Laws § 3-7-21(c),[1] the parties agreed to base the appeal on the record before the Board.[2] The parties timely submitted briefs by November 14, 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.*

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[1] R.I. Gen. Laws § 3-7-21 states in part as follows:

> Appeals from the local boards to director.
> ***
> (c) The director may accept into evidence a stenographic transcript of a witness's sworn testimony presented before the local board that was subject to cross examination. This testimony may be rebutted by competent testimony presented at the hearing held by the director.

[2] The undersigned was delegated to hear this appeal by order of the Director of the Department.

III. ISSUES

Whether to uphold or overturn City's decision to revoke the Appellant's License.

IV. MATERIAL FACTS AND TESTIMONY

At the hearing before the Board on August 4, 2014, Officer Matthew Macquion ("Macquion"), Providence Police Department ("PPD"), testified on behalf of the City. He testified he is a member of the Violent Crime Task Force and in response to a call of shots fired, he responded with his partner to the Appellant's parking lot at 1:20 a.m. on August 1, 2014. He testified that the parking lot is "L" shaped with one side being Sky. He testified that when he arrived there, there were about 50 to 75 people running around and there were approximately 15 to 20 officers there. He testified that an officer told him that there was suspect in the shooting in custody. He testified that he recognized a car that he had stopped the previous week in a traffic stop and spoke to the owner, Christian Castle ("Castle"). He testified that Castle told him that he, Bluestone Rhau ("Rhau") and Noel Brown ("Brown") had tried to enter the Appellant's but had been denied entrance so had gone into the parking lot to speak to a woman. He testified that the parking lot is across from a string of buildings that includes the building that the Appellant is in. He testified that Brown, Rhau, and Castle are associated with a street gang. On questioning from the Board, he testified that he did not know if the alleged shooter was in the club and he did not know of another way to gain entry into the club if denied entry.

Detective Richard Esposito ("Esposito"), PPD, testified on behalf of the City. He testified that he is a night detective and heard on the radio of report of a disturbance and possible shots at the Appellant's at approximately 1:20 a.m. He testified that he responded and spoke to the shooting victim, Justin Taylor ("Taylor"), and Taylor's girlfriend, Tameisha Haynes ("Haynes"). He testified that Taylor suffered a non-life threating bullet wound to his right

shoulder. He testified that he spoke to Haynes at the scene and at the police station. He testified that Haynes told him that the shooter was Samuel Judd ("Judd")[3] and she, Taylor, and Judd had been in the club. He testified that Haynes described Judd and the description matched the man in custody. He testified that Haynes said the shooting was in the side parking lot to the club. He testified that the he arrived about 1:30 a.m. and the club was closed.

On cross-examination, Esposito testified that when he spoke to Haynes, she stated that she, Taylor, and Judd were in the club and she knew Judd from being out at other clubs. On questioning from the Board, Esposito testified that he did not know why the shooting occurred. He testified that he was told there were maybe about ten (10) people involved in the fight. He testified that to his knowledge, one (1) shot was fired. He testified that he did not know about a disturbance inside the club. On re-cross, he testified that Haynes never said anything happened in the club.

Lieutenant Oscar Perez ("Perez"), PPD, testified on behalf of the City. He testified that he is responsible for Districts Two (2) and Three (3) where the Appellant is located. He testified that he has concerns about the Appellant as people will come to the station to file reports but no one ever calls from the clubs. He testified that when the club was called Dubai, a weapon was seized there. On cross-examination, he testified that the police get calls from other venues and he thinks that problems are caused by certain promoters.

At the August 14, 2014 Board hearing, the Appellant agreed that there were two (2) incidents of underage drinking in the club at April 20, 2014.

The City rested but requested that the Board take judicial notice that the promoter, Medina Costa ("Costa"), who was working at the Appellant's on the night of the shooting was also working at Jovan's on July 27, 2013 when there was a police-involved shooting.

[3] It should be noted that Judd is alleged to have been the shooter. He has not been convicted of this crime.

Emanuel Ventura ("Ventura"), Sky's manager, testified on behalf of the Appellant. He testified that he has been the manager since April, 2014. He testified that he was at Sky on August 1, 2014 and did not see Judd in the club and did not know him. He testified that there were no issues inside the club that night. He testified that when he heard about the shooting he was on his way home. He testified that the promoter Costa was there that night and had promoted Latin Night on four (4) other Thursdays and there were never any issues with him. He testified that he will not have Costa promote anymore.

On cross-examination, Ventura testified that night was a Thursday so the club closed at 1:00 a.m. He testified that he made sure everyone was out of the club and left the club leaving security to disperse the patrons from the parking lot. He testified that everyone was out of the club by 1:15 a.m. He testified that on Thursday nights, the club does not use private security so there were four (4) security staff that night who worked for Sky. He testified that for patrons entering the club, security uses wands and complete pat downs for patrons. He testified that he does not ensure the parking lot is cleared as that is security's responsibility. He testified that he previously managed a club in New York. On questioning from the Board, Ventura testified that he did not perform a background check for Costa and is not aware if Costa is a licensed promoter. He testified that he spoke to security after the shooting about the incident and one security staff member told him that a couple of patrons were "play fighting" in the parking lot. He testified that Sky's owner, Francisco Rodriguez ("Rodriguez"), hired him to manage the club and he would like to have police detail officers at the club. On further cross-examination, Ventura testified that that he did not have a written contract with Costa.[4]

[4] It was represented at hearing that Providence Ordinance § 14-233 requires promoters to be licensed and be hired by written contract.

At the request of the Board, the owner Rodriguez testified (the Appellant's attorney initially did not object). Rodriguez testified that he hired Ventura to manage as he knows Ventura's father who is in the business. He testified that once the bar closes at 1:00. a.m. and the patrons have exited, the bar has no more responsibilities. On cross-examination, he testified that he had owned Dubai which was in the same location as Sky and had a shooting there two (2) years ago. He testified that after Dubai, the club became Bongos and now is Sky. He testified that he hired Ventura to manage since he was tired of managing himself. He testified he has a contract with Ventura to manage the business.

At the August 18, 2014 Board hearing, Ventura was recalled to testify by the City. He testified that he is paid a weekly salary from which social security and workers compensation are not deducted and he does not have a contract but filled out an application for the job.

At the August 18, 2014 Board hearing, the City requested the Board take notice that the owner was not testifying further despite being requested and the City does not believe the owner is in control of its premises.

At the August 18, 2014 Board hearing, Sergeant David Tejada ("Tejada") testified on rebuttal for the City. He testified that he reviewed Sky's security video[5] of the night in question and had heard Ventura's testimony regarding the pat down procedures. He testified that he reviewed the video of the front door where the patrons entered and the security procedures seen on the video were not consistent with Ventura's testimony. He testified that there were no wands on the door on the video and the pat downs were approximately two (2) to three (3) seconds so not complete pat downs. He testified that Sky closed by 1:00 a.m. He testified at 1:17 or 1:18 a.m., three (3) security officers left the parking lot and got into a car. He testified that one (1) security officer is seen going to area where shooting happened which is off-camera and then 15

[5] The video itself was not entered into exhibit at the Department hearing (or the Board hearing).

seconds, he comes back on-camera and gets into the car and leaves and then seven (7) minutes later at 1:45 a.m.,[6] there is a disturbance and the shooting is off-camera. He testified that at 1:17 a.m., there are nine (9) cars and 15 people in the video shot but there could have been more people there that were not visible to the camera.

On cross-examination, Tejada testified that there are businesses and multi-family residences next to the parking lot. He testified that he saw three (3) security staff leave and did not see a fourth one (that was testified about) leave the parking lot. He testified that the shooting happened out of camera view about 12 parking spaces from the club's front door. He testified that there are other businesses between the club's front door and where the incident happened.

On re-direct testimony, Tejada testified that on video, patrons were allowed to exit the club carrying their beverages when they should have been stopped by security. On questioning by the Board, he testified that there were no disturbances inside the club on the video. He testified that the only time there is something resembling a disturbance on the video is at 1:25 a.m. and it is known that a shooting occurred at that time based on other testimony and police reports. He testified that prior to that time, there were no disturbances.

Included in the City's certified record are the police reports on the shooting. According to the report, a Detective A'Vant responded to the shooting at approximately 1:20 a.m. on August 1, 2014 and later spoke with Taylor at the hospital. The report states that Taylor stated he went to Sky that evening and left at closing time and walked to his car but his car would not start. Taylor stated that he was approached by an unknown subject who volunteered to assist in getting the car started and then four (4) unknown men approached him and one (1) bumped into the man trying

[6] The transcript states 1:45 a.m. but based on his further testimony and other testimony, the time being referred to really would be 1:25 a.m.

to fix his car and another man bumped him (Taylor), and asked him if he had a problem, displayed a handgun, and shot him (Taylor) before he had a chance to respond.

The same detective spoke with Judd who claimed it was someone else who shot Taylor and not him and said he had gone to Sky and left at closing with his cousin and some women and tried to impress the women by approaching the disturbance. The police report stated that at the scene, Haynes reported that someone said that the wrong man had been shot. The supplemental police report stated that Haynes and another witness stated that there was a disturbance involving a few subjects around the car. Said report also stated that Castle was interviewed and stated that he, Rau, and Brown went to Sky and were supposed to be let in by Judd but were not so they hung out in the parking lot but did not know why the disturbance started.

V. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM,* 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I.

1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. The Appeal before the Department

The hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984) (as the hearing is a *de novo* hearing rather than an appellate review of what occurred at the municipal level, any alleged error of law or fact committed by the municipal agency is of no consequence); *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964); and *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964) (Department's jurisdiction is *de novo* and the Department independently exercises the licensing function). Thus, while there was not a new hearing before the Department, the proceeding before the Department is considered a *de novo* hearing. The outcome of an appeal is a decision whether to uphold, overturn, or modify a licensing board's decision. Thus, this appeal is not bound by the Board's reasons for revocation but whether the Board presented its case for revocation before the undersigned. The undersigned will make her findings on the basis of the evidence before her and determine whether that evidence justifies said revocation.

The Department reviews sanctions to ensure statewide consistency and appropriateness in the situation. It also supports progressive discipline barring the rare and extreme event where revocation may be warranted without prior discipline. It also accepts the principles of comity and deference to the local authorities and their desire to have control over their own town or city. At the same time, pursuant to R.I. Gen. Laws § 3-2-2 and R.I. Gen. Laws § 3-7-21, the Department ensures that tensions between local boards and licensees are settled in a consistent manner. Nonetheless, there is not a mechanical application of sanctions as each matter has its own sets of circumstances. See *C&L Lounge, Inc. d/b/a Gabby's Bar and Grille; Gabriel L.*

Lopes v. Town of North Providence, LCA – NP-98-17 (4/30/99). At the same time, a sanction cannot be arbitrary and capricious. The unevenness of the application of a sanction does not render its application unwarranted in law but excessive variance would be evidence that an action was arbitrary and capricious. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation for a series on infractions). See *Jake and Ella's* (R.I. Super.) (overturning a revocation of a liquor license as arbitrary and capricious).

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

C. When Revocation of License is Justified

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

> (b) If any licensed person permits the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood . . . he or she may be summoned before the board, body, or official which issued his or her license and before the department, when he or she and the witnesses for and against him or her may be heard. If it appears to the satisfaction of the board, body, or official hearing the charges that the licensee has violated any of the provisions of this title or has permitted any of the things listed in this section, then the board, body, or official may suspend or revoke the license or enter another order.

In revoking a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. Rather, the Rhode Island Supreme Court held in *Cesaroni* at 295-296 as follows:

> [T]he legislature, in enacting the pertinent provision of the statute, intended to impose upon such licensee the obligation to maintain an efficient and affirmative supervision over the conduct of his patrons in his place to such an extent as is necessary to maintain order therein. It is our opinion that as a practical matter a licensee assumes an obligation to affirmatively supervise the conduct of his patrons so as to preclude the generation therefrom of conditions in the neighborhood of like character to conditions that would result from maintenance of a nuisance therein.
>
> It is to be conceded that this imposes upon a licensee an onerous burden in the management of the licensed premises. It is, however, within the authority of the legislature, the liquor traffic being peculiarly within the police power of the state.

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

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

Thus, a liquor licensee has the "responsibility to control the conduct of its patrons both within and without the premises in a manner so that the laws and regulations to which the license is subject will not be violated." *Schillers, Inc. v. Pastore*, 419 A. 2d 859 (R.I. 1980). In a denial of renewal matter,[7] *A.J.C. Enterprises v. Pastore,* 473 A.2d 269, 275 (R.I. 1984) found in discussing the disorderly provisions that "[T]here need not be a direct causational link between incidents occurring outside or nearby a drinking establishment and its patrons. Such a link is

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

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

A liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali.* It is not a defense that a licensee is not aware of the violations or provided supervision to try to prevent violation. While such a responsibility may be onerous, a licensee is subject to such a burden by the legislature and accepted such conditions by becoming licensed. *Therault v. O'Dowd*, 223 A.2d 841, 842-3 (R.I. 1966). See also *Scialo v. Smith*, 99 R.I. 738 (R.I. 1965). As the Supreme Court has found, "the responsibility of a licensee for the conduct of his patrons within the licensed premises that makes it disorderly within the meaning of the statute is established by evidence showing a toleration or acquiescence in such conduct by the licensee." *Cesaroni*, at 296.

Nonetheless, the 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. See *Stage Bands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328508 (R.I. Super.) (disturbances and a shooting on one night justified revocation) and *Pakse Market Corp.* (upholding revocation of license when had four (4) incidents of underage sales within three (3) years). See also *Cardio Enterprises, d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (killing of patron with incident starting inside and escalating outside justified revocation).

Thus, the Department will uphold a revocation where an incident is so egregious as to justify revocation without progressive discipline. However, the Department will decline to uphold a revocation where the violation is not so egregious or extreme and the local authority has not engaged in progressive discipline. *Infra.*

D. Arguments

In closing, the Appellant argued that the evidence shows there was no altercation in the club or outside but rather outside in the parking lot, some men approached the good Samaritan who was helping Taylor with his car and Taylor was shot. The Appellant argued that there is no evidence shows that Ventura is leasing the license.

In closing, the Board argued that the manager, Ventura, testified that security noticed play fighting in the parking lot and made no effort to quell the disturbance that escalated into the shooting. The Board argued that the testimony from Ventura establishes that he does not have the requisite experience to manage a bar as he left at closing time and did not leave anyone in charge. The Board argued that the testimony from Rodriguez and Ventura was contradictory and since the Appellant did not comply with a subpoena seeking Ventura's employment records, the only inference to be made is that Rodriguez was leasing the License to Ventura.

E. Sanctions Prior to August 1, 2014

The City presented Dubai's licensing history which includes a 12 day closure in March, 2012 for a disturbance and the ordering of a mandatory police detail at weekends for 30 days. In 2011, a $500 penalty was imposed for failure to maintain supervision and in 2012, a $750 penalty was also imposed for entertainment without a license. No licensing history was presented regarding Sky; though, Dubai and Sky have the same license holder.

F. Whether the Appellant Violated its Statutory Requirements

i. Underage Allegations

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

> Revocation or suspension of licenses – Fines for violating conditions of license. – (a) Every license is subject to revocation or suspension and a licensee is subject to fine by the board, body or official issuing the license, or by the department or by the division of taxation, on its own motion, for 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, or for breach of any provisions of this section.

The Appellant agreed that there were two (2) underage violations at the club on April 2014 which violates R.I. Gen. Laws § 3-5-21.

ii. R.I. Gen. Laws § 3-5-23

The City argued that based on the shooting, the Appellant allowed its premises to become disorderly on the night of July 31 to August 1, 2014. On July 31 to August 1, 2014 (a Thursday to Friday), Taylor, the shooting victim, and Haynes, his girlfriend, were in Sky. Haynes told Macquion that the (alleged) shooter (Judd) was in the club. Tejada testified as to reviewing the video when people entered but he never identified Judd on the video entering the club. Macquion testified that there were no other entrances to the club. Haynes did not testify before the Board or before the Department. Before the Board, Ventura testified that he did not see the Judd in the club. There was no testimony from any eyewitness – either from a patron inside the club or the police in reviewing the video - that Judd was in the club that night. The evidence that Judd was in the club was that Macquion testified that Haynes told him that Judd was and that Castle told him that Judd was going to let him and his friends in the club. The police report indicates that Judd said he was in the club. The analysis for this decision will assume that Judd was in the club.

Tejada did not identify a disturbance inside the club. There was no testimony by patrons or police officers before the Board or the Department regarding any disturbance within the club. Indeed, the evidence was that patrons exited carrying drinks so the exit must have been orderly without jostling. There is no dispute that club closed at 1:00 a.m. Ventura testified everyone was out of the club by 1:15 a.m. There was no testimony based on the review of the video disputing

the time of exit.[8] The video did not show a disturbance spilling out of the club into the parking lot. In addition, the police spoke to people in the club who said there was no disturbance. There was no evidence (whether eyewitness, on video, in a police report, etc.) entered at hearing that there was any disturbance whether oral or physical in the club that night.

The Board tries to link some play fighting in the parking lot and the shooting. The only "evidence" of play fighting is Ventura, the manager that the Board argues is incompetent to run bar. And that evidence is not direct evidence from Ventura but rather he testified a security member told him there was play fighting. From this, the Board argues that there was a disturbance that should have been quelled but was not and this caused the shooting. There is no evidence on the record supporting a link between some play fighting and the shooting.

The only evidence about the reasons for the shooting was the police report which indicates that the disturbance started by Taylor's car. The police report states that Taylor said the disturbance started when he was trying to get his car to start and someone was helping him and four (4) men approached them, one (1) bumped him, and pulled a gun.[9] The parking lot is used by Sky but other businesses and residences also can use it. The security staff left at 1:18

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[8] Rule 18 of *Commercial Licensing Regulation 8 – Liquor Control Administration* requires in part as follows:

> HOURS OF BUSINESS – RETAIL
> (a) All patrons shall leave the licensed premises not later than 1:20 a.m. where the licensee is permitted to remain open until 1:00 a.m. Last call shall be at 12:45 a.m. Where licensee is permitted by local ordinance or permit to remain open until 2:00 a.m. all patrons must leave the licensed establishment by 2:00 am. All employees shall leave the licensed premises within one-half hour after the required closing time; provided the owner or employees may enter or be in a licensed establishment at any time for a legitimate business purpose with approval from the local police department.

Thus, the Appellant was in compliance with the closing requirements as all patrons had left the club before 1:20 a.m.

[9] The police report stated that Haynes said a bystander said that Taylor was shot by mistake. At the Board hearing, Sky entered into evidence a print-out of an article on the "turnto10" website about the shooting with a comment by the Facebook name of Justin Taylor that the shooting was not gang related but was a mistake. The post by the Justin Taylor was not authenticated but is a Facebook account name.

a.m. No disturbance was caught on video until the off-camera shooting at approximately 1:25 a.m.[10] This was not an escalating fight that resulted in a shooting but rather an approach to Taylor and a shooting.

Under *Cesaroni*, Sky is directly or indirectly responsible for the actions of its patrons and for the actions arising inside or emanating from inside the bar. There was no evidence of any disturbance starting inside the bar and spilling outside where it culminated in the shooting. See *Stage Bands* and *Cardio*. Assuming Judd was a patron, there was no evidence establishing that the shooting had its origins in something that arose in the bar.[11]

Thus, it is not enough that Judd was Sky's patron to make Appellant responsible for his (alleged) actions. There is a very strict requirement that makes a licensee responsible for actions inside the bar and those outside activities that arise from inside the bar even if the licensee knew of the actions or tried to supervise its patrons and prevent the activities. However, in order for Sky to be responsible there must be some kind of activity for which the bar is responsible for and from which it can be inferred the shooting by Judd arose.

The only evidence regarding the start of the disturbance is the police report and taking that as the evidence of the disturbance, there is nothing in it that links the club directly or indirectly to the shooting since the report only indicates that the shooting occurred by the Taylor's car. There was no evidence entered at hearing that demonstrated that Taylor being shot was directly or indirectly linked to the actions of Sky's patrons or activities inside the club.[12]

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[10] The police testimony was that the shooting was approximately at 1:20 a.m. but the testimony regarding the disturbance based on the video put the shooting at 1:25 a.m.

[11] If Judd was not a patron, Sky cannot be responsible for his actions. *El Tiburon Sports Bar, Inc. v. Providence Board of Licenses*, DBR No. 06-L-0087 (6/1/07) (victim had been a patron of that bar but was assaulted down the street and there was no link between the bar and the assault. There was no evidence to show that the bar had not supervised its patrons so as to be linked to the assault).

[12] Sky apparently violated Providence ordinances by not using a licensed promoter. The Board seemed concerned that the security had left the parking lot too soon and indeed under the regulation, patrons have up to 1:20 a.m. to leave for a 1:00 a.m. closing so security should be there for that exit time. The City put on testimony about general

iii. Control of Premises

R.I. Gen. Laws § 3-5-29 provides as follows:

> Prohibition against assignment or leasing of license. – The holder of a license issued pursuant to this title shall not assign, rent, lease or let the license but may transfer his or her interest only as provided in § 3-5-19.

Rule 25 of *Commercial Licensing Regulation 8 – Liquor Control Administration* ("CLR8") provides as follows:

> **MANAGEMENT COMPANY – RETAIL**
>
> The holder of an alcoholic beverage license may not lease, assign, rent, or let the licensee or give management operational rights or control of the licensed premises to a third party.
>
> (a) Transfer of a license by a licensee to a "management company" or third party is prohibited.
>
> (b) All requests to assign interests, including but not limited to a percentage of profits, are prohibited.

At the request of the Board, the owner, Rodriguez testified but then declined to further testify at the next hearing date. The City objected when Rodriguez declined to testify further. For the appeal hearing, the City issued a subpoena to the Appellant requesting Ventura's employment records including his employment application, IRS W-2 wage and tax statement, payroll records, evidence of worker's compensation, any employment or management agreement, and any other documentation evidencing Ventura's employment by Sky.[13] The Appellant did not comply with the subpoena.

The testimony at the Board hearing was that the owner hired a manager. Hiring a manager does not amount to leasing or assigning a liquor license but giving operational rights or control of the premises to a third party does. See CLR8. There was contradictory testimony

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concerns about Sky but presented no evidence of actual complaints filed about Sky (e.g. actual police reports) where Sky did not contact the police. A liquor licensee cannot be found to have violated the applicable statutes or regulations based on concerns but rather the concerns must be based on actual facts and evidence.

[13] The subpoena also request receipts and invoices for the purchase of alcoholic beverages for the sale at Sky for March 1, 2014 through August 1, 2014.

regarding the arrangement between Rodriguez and Ventura. Rodriguez testified that he had a contract with Ventura; Ventura testified that he did not have a contract but was paid weekly. Instead of clarifying the actual arrangement between Rodriguez and Ventura, the Appellant did not comply with a subpoena that would have shown the employment arrangement between Rodriguez and Ventura. The only conclusion that can be drawn from the refusal to comply with the subpoena is that the Appellant is in violation of R.I. Gen. Laws § 3-5-29 and Rule 25 of CLR8 by giving operational control or control of the premises to a third party (Ventura).

iv. Conclusion

The evidence did not show that Sky had allowed its premises to become disorderly.

The Appellant violated R.I. Gen. Laws § 3-5-29 and Rule 25 of CLR8 by leasing or assigning its License to Ventura.

The Appellant violated R.I. Gen. Laws § 3-5-21 by allowing underage drinking.

G. What Sanctions are Justified

The Appellant admitted to two (2) underage violations. The Board did not reference the underage drinking violations in its written revocation decision. In 2012, an administrative penalty was imposed on the Appellant making these underage violations a "subsequent" offense pursuant to R.I. Gen. Laws § 3-5-21(b).[14] Therefore, an administrative penalty of $1,000 is imposed for the underage violations.

Based on the evidence, there are no grounds to revoke or suspend the License for disorderly violations.

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[14] R.I. Gen. Laws § 3-5-21 provides in part as follows:

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(b) Any fine imposed pursuant to this section shall not exceed five hundred dollars ($500) for the first offense and shall not exceed one thousand dollars ($1,000) for each subsequent offense. For the purposes of this section, any offense committed by a licensee three (3) years after a previous offense shall be considered a first offense.

The Appellant failed to comply with a subpoena in order to establish the actual relationship between Ventura and Rodriguez. The refusal to comply with the subpoena provided the basis to conclude that the Appellant was violating R.I. Gen. Laws § 3-5-29 and Rule 25 of CLR8 by assigning or leasing its License to Ventura. A liquor licensee is issued a license and is responsible for that license. It cannot outsource that responsibility by allowing someone else – not issued the license and unknown to the licensing authority - to act as the licensee by having operational control or control of the licensed premises. Such a violation is egregious as it circumvents the purpose, intent, and the actual regulatory scheme of the liquor licensing statute and is grounds for revocation. Here, the Appellant not only was leasing or assigning its License but refused to comply with the subpoena so revocation is appropriate.

VI. FINDINGS OF FACT

1. On or about August 20, 2014, the Board notified the Appellant that its License had been revoked by the City.

2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision to the Director of the Department. The parties chose to rely on the record below.

3. Written closings were filed by November 7, 2014.

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

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

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. The Appellant violated R.I. Gen. Laws § 3-5-29 and Rule 25 of CLR8 by leasing or assigning its License to Ventura.

3. The Appellant violated R.I. Gen. Laws § 3-5-21 by allowing underage drinking.

4. The Appellant did not violate R.I. Gen. Laws § 3-5-23.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the decision of Providence revoking the Appellant's License be upheld but that revocation is based on the violations of R.I. Gen. Laws § 3-5-29 and Rule 25 of CLR8. Pursuant to R.I. Gen. Laws § 3-5-21(b), an administrative penalty of $1,000 is imposed for the underage violations.

Dated: November 24, 2014

Catherine R. Warren
Hearing Officer

ORDER

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

✓ ADOPT
_____ REJECT
_____ MODIFY

Dated: 25 Nov 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 26th day of November, 2014 that a copy of the within Decision was sent by first class mail, postage prepaid to John S. Ciolli, Esquire, 381 Atwells Avenue, Providence, RI 02909 and Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903 and by hand delivery to Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Bldg. 68-69, Cranston, RI 02920.