



Regulation (“Department”). The appeal was held in abeyance while the Appellants filed a motion for reconsideration of the denial with the Board which was heard on or about August 17, 2009 and denied. The Appellants again appealed the Board’s decision to deny the Appellants’ application. This *de novo* hearing was held on September 18, 24 and October 8, 15, and 27, 2009, before the undersigned sitting as a designee of the Director. The parties rested on the record.

## **II. JURISDICTION**

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 3-1-1 *et seq.*, R.I. Gen. Laws § 3-7-21, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

## **III. ISSUE**

Whether to uphold or overturn the Board’s decision to deny the Appellants’ application for the transfer of the License.

## **IV. MATERIAL FACTS AND TESTIMONY**

Everett Brooks (“Brooks”) testified on behalf of the Board. He testified that he is employed by Johnson & Wales University (“JWU”) as the Director of Community Affairs and is authorized to speak on JWU’s behalf regarding community activities. He testified that JWU objected to the License transfer because of the location and past events that occurred there including altercations, underage drinking, and patron detoxifications because of excessive drinking. He also testified that JWU objected because the location is close to four (4) of its residential halls including two (2) that house approximately 1,000 students and are approximately fifty (50) yards from the location. He testified that the location is known as a convenient place for JWU students to drink but he does not

possess personal knowledge of instances of underage drinking but has seen JWU security reports. He testified that JWU also opposed the transfer since he had been told the applicant's husband was involved in two (2) clubs where there had been issues including instances of physical altercations, public rowdiness, and public drinking.<sup>3</sup> Tr1 7-22.<sup>4</sup>

Upon cross-examination, Brooks testified that he felt the Appellants would not target an upscale clientele but would target a younger clientele and just be another drinking bar like the ones with which JWU previously had problems. Tr1 22-38.

Cliff Wood ("Wood") testified on behalf of the Board. He testified that while he is a City Councilor, he appeared on behalf of Cornish Associates ("Cornish") which is a real estate development company whose mission is to revitalize downtown Providence. He testified that Cornish opposes the transfer because of concerns about the applicant's inexperience in running a club and her relationship with those that operate Jewelry District clubs since those club goers are detrimental to development. He testified that Cornish owns five (5) buildings within a one (1) block radius of the location and the proposed transfer would negatively impact Cornish's ability to rent its units because the area would be perceived as dangerous. He testified that he is aware that the location is currently licensed as Class B with an N designation. Tr1 42-51.

Upon cross-examination, Wood testified that he does not object to an establishment at said location. He testified that he objects to the transfer because he has been advised by the police that the proposed licensee is married to Ellinton Rosario

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<sup>3</sup> Brooks testified that he believed that Sharlene Alon's husband was a co-owner of Club Elements and Club Heat and those clubs were one in the same. Those clubs are located in the same building but are separate. The parties stipulated that Sharlene Alon's husband, Ellinton Rosario, is a co-owner of Club Elements and has no interest in Club Heat. Tr1 36

<sup>4</sup> Tr1 is used to refer to the transcript of the first day of hearing held on September 18, 2009 with subsequent volumes referred to by the number of that hearing. The numbers after Tr1 etc. refer to the page numbers of the pertinent transcript.

("Rosario"), who is a partial owner of Club Elements ("Elements"). He testified that he based his opinion on his conversations with the Providence Police and from reading the newspapers he knows Elements has had issues with the police. He testified that he believes the proposed licensee is inexperienced in management. He testified that after the Board's first denial hearing, he, Sharlene Alon ("Alon"), and Alon's attorney met and discussed the proposed establishment but that did not allay the concerns about Alon's inexperience, location, and relationship to Rosario. Tr1 51-75.

Lieutenant Michael Figueiredo ("Figueiredo"), Providence Police Department, testified on the Board's behalf. He testified that he is the commander of the downtown area which includes nightclubs, the financial district, and the proposed location. He testified that he views activity reports from that area. He testified that he works at nights and weekends, and is familiar with the prior establishments at said location which have included clubs with liquor licenses, but they have not been licensed for entertainment. He testified that the previous licensee, Shobar, operated for less than one (1) year, and during that time the police responded on multiple occasions for having entertainment without a license<sup>5</sup> and for inside and outside disturbances after closing time. Tr1 78-82.

Figueiredo testified that Thomas Menna ("Menna") acquired a liquor license for said location and Menna owns three (3) liquor licenses, Martini, another bar, and Club Energy ("Energy"). He testified that Menna originally only obtained a liquor license but fixed the building so was able to also obtain an entertainment and an N license.<sup>6</sup> He

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<sup>5</sup> The Board's attorney represented that an entertainment license is needed for music, live bands, and a disc jockey. Tr1 79. See [www.providenceri.com/sb/faq.bol.php](http://www.providenceri.com/sb/faq.bol.php) (as of 2/4/10) for the Board's definition of entertainment pursuant to R.I. Gen. Laws § 3-7-7.3.

<sup>6</sup> R.I. Gen. Laws § 3-7-16.6 Class N nightclub license states in part as follows.

(a) Notwithstanding any provision of this title to the contrary, any town or city council, by ordinance, may authorize the licensing authorities designated as having the right,

testified that the police oppose the transfer because Alon is not experienced in operating nightclubs, and the establishments that she has promoted (including Elements, Club Heat, and Chez Ben) have had problems and also because nightclubs with entertainment and liquor licenses have more problems than clubs with only liquor licenses. He testified that the police believe that the location would cause problems since it is close to JWU and there have been problems with other bars in the area. Tr1 82-94, 98-100.

Upon cross-examination, Figueiredo testified that he did not believe that Alon is a straw person for Rosario. He testified that the police have not reported any incidences at Martini and there have been no calls from neighbors regarding Martini but there is still a concern because there is a difference between running and owning a bar. Tr1 100-114.

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power, and jurisdiction to issue licenses under this title pursuant to § 3-5-15 to designate and issue a special class of Class N nightclub licenses within its jurisdiction.

(b) A Class N license, when so authorized, shall be required by each establishment within the jurisdiction which:

(1) Has as its primary source of revenue the sale of alcoholic beverages and/or cover charges;

(2) Holds a Class B or Class ED license;

(3) Has a fire department occupancy permit of no less than two hundred (200) persons and no greater than ten thousand (10,000) persons; or any establishment with a fire department occupancy permit of less than two hundred (200) persons that holds an entertainment license.

(c) Any establishment with a Class N license which admits patrons under twenty-one (21) years of age on the premises of the establishment when alcoholic beverages are being sold, served, or permitted on the premises shall, during the time the patrons are permitted on the premises:

(1) Require one form of identification. The identification shall contain the bearer's photograph, and must be one of the following: state driver's license, US military identification, state issued identification card, or passport, from every person claiming to be twenty-one (21) years of age or older;

(2) Identify patrons over twenty-one (21) years of age with both an identifiable hand stamp and a bracelet and shall require every patron to show both hand stamp and bracelet before purchasing an alcoholic beverage;

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(g) Any establishment that holds a Class N nightclub license must:

(1) Comply with local ordinances governing noise levels;

(2) Cooperate with law enforcement officials;

(3) Provide private security for the safety of patrons both inside and outside the establishment, which private security must be certified by TIPS or a similar agency approved by the licensing authority; and

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Upon re-direct examination, Figuerido testified that since Martini opened, the nearby colleges have not been in full session and Martini would be able to attract a college-age crowd, if it chose to market itself to a college-age crowd. Tr1 114-122.

On re-cross examination, Figuerido testified that there has been a bar in the proposed location for the 21 years that he has been in the police department. Tr2 7-9.

Alon testified on behalf of the Appellants. She testified that she attended Boston College and New England Institute of Technology and has a special interest in graphic design. She testified that her father, a retired Medical Examiner in the State of New York, is supporting her in this venture. She testified she is married to Rosario and he is a co-owner of Elements. She testified that she entered into a Purchase and Sales Agreement (“PSA”) with Menna to purchase Martini and a condition of the PSA is to transfer Martini’s License.<sup>7</sup> She testified that at the time of the first application, the club was not open but it opened in May [2009]. She testified there is no connection between her and Shobar. She testified she never operated a nightclub without a license, and she provided the Board with all her work history. See Board’s Exhibits One (1) (Martini’s licensing file) and Two (2) (proposed business plan and menu). She testified that she has promoted clubs since 2006 through her on-line company, R.I. at Night, and has promoted almost all of the Providence clubs, both good and bad. Tr2 10-19.

Alon testified that she wasn’t the manager by name of Chez Ben but that she ran the club for about four (4) months at the end of 2008.<sup>8</sup> She testified that she promoted

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<sup>7</sup> See Board’s Exhibits Seven (7) through Twelve (12) (initial hearings before Board for transfer of License and the motion for reconsideration and reconsideration hearing).

<sup>8</sup> At the Board’s first hearing on April 20, 2009, Alon testified as follows in response to questions from Andrew Annaldo, Chair of the Board:

Q. So you are opening up a night club at night?

A. Well, it’s not really a ---, what, yeah. It’s small. It’s not a large venue.

Q. And what are you looking at for entertainment?

the club, ordered and checked the liquor inventory, enforced the dress code, and ensured security was doing its job. She testified that because her husband is an owner of Elements, she assisted at that club but was not paid. She testified that she handled the Elements' front door to ensure everyone was in dress code because she has learned that 90% of the problems that happen in a club can be stopped at the door. She testified that she also patrolled the bars and kept an eye on things. Tr2 20-27

Alon testified that she has been managing Martini exclusively since May 2009 on Menna's behalf. She testified that she receives \$500 a week and the club is solvent. She testified that she maintains the books, orders liquor weekly, and performs the liquor inventory. She testified that she schedules the employees' shifts. She testified that each

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A. For entertainment we have DJ's, and we have jukebox for during the day.

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Q. What experience do you have running an establishment like this?

A. Well, I mean, I owned my business for -- owned a business for probably ten (10) years. I've owned retail stores. I've owned promotional companies for nightclubs, and I've been around the business. I know the promotions end of it. I am in contact with, you know, bartenders and . . .

Q. Have you run an establishment of this kind?

A. I have never managed a club, no.

Q. OK, your background is in retail, promotions --.

A. Promotions.

Q. -- of other establishments?

A. Right.

Q. And now you are trying to get into --

A. I was trying to go (sic) get into the restaurant business.

Q. But this is a pub.

A. I understand that this is a pub

Q. This has hors d'oeuvres and drinks.

A. Right. I do want to get into the food part of it as well as the night club part of it.

Q. But this is going to be hors d'oeuvres and --

A. Well, we --

Q. This is not a restaurant.

A. We will be serving pizzas and sandwiches and that type of thing.

Q. What is the capacity there?

A. I believe it's -- 148. I believe it is.

Q. Are there any tables there?

A. There are some tables, yeah.

A. There are some tables, yeah.

Q. How many tables?

A. I would say seven or eight tables right now.

Q. Seven or eight tables. So mostly stand up. And is there a dance floor?

A. There is a dance floor, yes.

See Board's Exhibit Seven (7), pp. 3-7.

night is a different theme night. She testified that the security is registered with the Providence and the staff is TIPS certified as required and she has a public safety and security manual for her staff. She testified she prepared the manual to ensure that all employees follow the right procedures for public safety, serving liquor, dress code, and handling customers. She testified Martini serves sandwiches, pizzas, wings, and salad, and she determines the menu prices by determining how much each item costs and what can be charged in order to ensure a profit. See Appellants' Exhibits Two (2) (liquor order); Three (3) (bartender, security, waitstaff schedule); Six (6) (training manual); and Seven (7) (menu worksheet). Tr2 27-51.

Alon testified that she will change Martini's name to Club Sugar ("Sugar") if she obtains the License. She testified that since she has been managing the club, there have been no police incidents, no underage drinking, and no fights. She testified that she plans to purchase an ID scanning machine that costs \$2500 and prevents fake ID's from being used since the machines scans ID's to verify age. She testified that the club has a strict dress code and will be 21 plus so underage drinking will not be a problem. She testified that that she plans to purchase a camera system. She testified that she is purchasing the club for \$160,000 with \$110,000 upfront and a \$50,000 promissory note payable over five (5) years. She testified that she is not a straw person for her husband. Tr2 51-71

On cross examination, Alon testified that she answered questions at the Board hearing. She testified that at that hearing, she did not testify about running Chez Ben or assisting with Elements. She testified that she was not given a chance to speak about that experience. She testified that she remembered being asked about her background and answering it was in retail. She testified that the question about whether she had



experience running an establishment was a yes or no question and she said no. She testified that she had some part in running Chez Ben in the Fall of 2008 and it opened on Thursdays, Fridays, and Saturdays. She testified that she believed that Chez Ben had an entertainment license. She testified that she helped Chez Ben's owner since she was "test driving" the club prior to attempting to purchase it but never held the official title of manager. She testified that she has never been a manager except at Martini. She testified that there was a friend of Chez Ben's owner who acted as a manager though he didn't have the title. She testified that she helped her husband with Elements but was never the manager since there was a manager so she was only ensuring everything went smoothly. She testified that she believed she responded to Annaldo's question as she did because she never was a "manager." See footnote eight (8). She testified that she started helping at Elements when it opened in 2007 and stopped helping in 2009. She testified that she promoted for Elements in 2008 when there were violations but has no knowledge of being there on those dates. See Board's Exhibit Fourteen (14). She testified that her dress code at Martini is stricter than Elements. Tr2 71-101

On cross-examination, Alon testified that Chez Ben had an entertainment license on the wall and she didn't know that on January 8, 2009 Chez Ben was cited for having live entertainment without a license. She testified that she ran Chez Ben until December 31, 2008 which is when she found out that it had a limited entertainment license so that she and her husband renegotiated their potential purchase of that club. See Board's Exhibit Fifteen (15) (Chez Ben's licensing history). Tr3 5-21.

Alon testified that she assisted at Elements until she started managing Martini. She testified that she stopped promoting for Club Heat after Elements opened. She

testified that she has no plans to increase Martini's capacity. She testified that she has different promoters for most nights except Wednesdays which she promotes and she uses different colored wristbands for each night and security staff check patrons' ID's. She testified that she promoted for RI at Night mostly in 2007 and now isn't involved except for designing fliers for Elements and RI at Night and only promotes Elements and non-club activities and her husband handles it. Tr3 21-51, 78, 88-139.

On redirect examination, Alon testified that if she has lunch at the club, she will allow 18 plus for lunch but the evening will always be 21 plus. Tr 3 153-159.

On examination by the undersigned, Alon testified that she doesn't plan to change the club's interior if she receives the License. She testified that Martini is different from Elements since it is smaller, has a stricter dress code, and is more laid-back. She testified that she doesn't plan to change the format but she might tighten the dress code. She testified that she doesn't believe Martini competes with Elements for the same club-goers and Sugar wouldn't either. She testified that if she receives the License she would keep the same promoters if they continue to work out. She testified that if the License is transferred to her, she would design flyers for Elements if they asked her though only if paid. She testified that her husband and the other co-owners of Elements would not have a say in Sugar since they would have not have a say over promoters, food, advertising, or hiring. She testified she plans on keeping the staff she has now and maybe adding staff. She testified that she was pretty much happy with her current business plan. She testified that she will mostly have d.j.s for entertainment. Tr3 166-172, 178.

On further direct examination, Alon testified that she would advertise on 92.3 Pro-FM rather than Hot 106 since she is targeting a nine-to-five crowd. She testified that

everyone uses Hot 106 and she doesn't want to do what all the downtown clubs do. She testified that Hot 106 is hip-hop and she doesn't have hip-hop nights. Tr3 153-173.

On further cross-examination, Alon testified that Martini's business plan is her business plan that she wanted to do when the License was denied in April. She testified that Menna wanted to run a nightclub/lounge and she proposed her business plan which is what she implemented. Tr3 173-176.

Menna testified on behalf of the Appellants. He testified that he is the owner of Martini which has a full BX 2:00 a.m. license that he obtained on October 10, 2008. He testified that when he applied for the License he told the Board he would open a night club because he was going to sell his other club, Energy, but the deal fell through. He testified that Energy is a gay bar but he didn't present a business plan or résumé at the Board hearing and no one objected to his application. He testified he didn't tell the Board about his plan to move Energy but said he was going to have a dance club. Tr4 5-10.<sup>9</sup>

Menna testified that on October 29, 2008, he returned to the Board to obtain an N license and no one objected. See Board's Exhibits Five (5) (October 10, 2008 Board hearing transcript) and Six (6) (two (2) transcripts Board's October 29, 2008 hearing). He testified he didn't open right away because the building needed building and fire renovations and he wanted to ensure he obtained a license before completing renovations. He testified that he had thought he would sell Energy but had not been able to so he decided to sell Martini since he was running out of money. He testified that in March,

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<sup>9</sup> Menna's testimony before the Board was as follows:

Menna: I plan on running a dance club. I currently have one, and it's - I have a piano in one room so - it's a gay nightclub. I've been fairly successful in the past and with the police. I don't have any problems with my clientele.

Mr. Annaldo: Okay.

Menna: I want to continue that.

See Board's Exhibit Five (5), p. 5.

2009 he paid the fee to receive the License (e.g. have it issued; it had been previously granted). He testified that prior to opening Martini, he entered into a PSA with Alon and hired Alon because she seemed she would be capable of running the club, had done promotions, other club owners told him she was good at promotions, she wanted to buy it, and he wanted to give her a chance. He testified that initially when Alon started running the club he went there three (3) or four (4) times a week but now he meets with her once a week. He testified she is doing a great job and no problems have arisen. He testified that Alon prepared the business plan, showed it to him, and he approved it. He testified he has been in the bar business for twenty (20) years and he thought it was a good plan and that it would be successful. He testified that she is to pay him a lump sum cash payment with a promissory note to purchase the club and he believes she will be able to pay it. He testified that in his opinion he doesn't think she will have Elements run the club and she plans to continue with 21 plus. Tr4 10-20.

On cross-examination, Menna testified that in reviewing the transcript he believed that the Board was aware of his plan to run a dance club and was aware of his operation at Energy.<sup>10</sup> He testified he knew there was a bar at the location previously and the landlord told him the prior owners didn't pay their bills or taxes. He testified that Alon's plans are different from his. He testified that in the beginning of 2009, he went to the Fire Board for a variance for the building. He testified that Martini is making a small profit and he can pay Alon from the profit. Tr4 20-52.

On questioning from undersigned, Menna testified that Alon is responsible for payroll and there is a payroll company. He testified that Alon was familiar with ordering liquor but he did sit down with her anyway and tell her how he does it but everyone does

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<sup>10</sup> At the hearing, Mr. Annaldo stated that Mr. Menna has been in business for many years. *Id.*

it a little differently because different clientele have different likes. He testified that he has owned different bars in the city for twenty (20) years. He testified he met Alon through a broker since he was looking to sell since he was running low on money and since the License transfer was denied he decided to open since he needed money. He testified the menu was Alon's idea. He testified that she hired the bartenders, security, and the chef. Tr4 52-53; 67-69.

Rosario testified on behalf of the Appellants. He testified that he has been married to Alon for three (3) years and they have been together for eleven (11) years. He testified about three (3) or four (4) years ago, they started promoting clubs. He testified that in March, 2008, they looked at Chez Ben and the owner asked if they would do promotions since the place was not doing well and if they would be interested in buying the place so they decided that Alon would look into Chez Ben to see if it would be a good purchase but it turned out that it needed an entertainment license. Tr4 69-81.

Rosario testified that Alon doesn't have legal involvement with Elements. He testified that she is not a partner, can't cut checks, can't cash out, and has no authority to hire or fire employees. He testified that in the beginning when Elements first opened, she came in to make sure things were running smoothly, collect money at the door, help with the coatroom, or observe the bartenders. He testified that the management of Elements will not be involved in managing or making any decisions for Sugar. He testified that Martini is Alon's business and he runs RI at Night and Elements. He testified that Alon had no responsibility for any of the Elements' violations. Tr4 81-93.

On cross-examination, Rosario testified that Alon was another set of eyes when Elements opened. He testified that Elements has a full-time manager and is open three

(3) days a week. He testified that the full-time manager is responsible for ordering liquor, that there is enough staff on duty, and that the place is cleaned and Alon watched for some of those issues but was not part of management. Tr4 93-126.

On redirect examination, Rosario testified that Sugar Inc. is a corporation and he is not a shareholder and would not be responsible for any debts but because he is married to Alon, they would share in any profits from Sugar or Elements. Tr4 139-141.

On questioning from the undersigned, Rosario testified he is familiar with most of Alon's plans and her plans attract a different crowd than Elements and is 21 plus unlike the other downtown clubs. He testified that he understands that she will continue her plans if she obtains the License. Tr4 146-147.

## V. DISCUSSION

It is a matter of law that local licensing boards have broad discretion in deciding whether or not to grant a liquor license application. "The granting or denying of such licenses is in no sense an exercise of the judicial process. On the contrary it is purely administrative. In performing that function the board act (sic) as agents of the legislature in the exercise of the police power. . . . [I]t is a matter of discretion whether or not they shall grant the license and this court has no control over their decision." *Bd. of Police Comm'rs v. Reynolds*, 86 R.I. 172, 176 (1975). The Department has the same broad discretion in the granting or denying of liquor licenses. *Id.*, at 177. See *Domenic J. Galluci d/b/a Dominic's Log Cabin v. Westerly Town Council*, LCA-WE-00-04 (10/25/00); *Donald Kinniburgh d/b/a Skip's Place v. Cumberland Bd. of License Commiss'rs*, LCA-CU-98-02 (8/26/98).

R.I. Gen. Laws § 3-5-19 governs the transfer or relocation of a liquor license. The transfer of a liquor license pursuant to R.I. Gen. Laws § 5-3-19 is treated the same as a new

application. *Ramsay v. Sarkas*, 110 R.I. 590 (1972). See also *Island Beverages v. Town of Jamestown*, DBR No. 03-L-0007 (3/13/03); *BDR v. City of Providence, Board of Licenses*, LCA-PR-00-07 (9/18/00). The application to transfer the License to the Proposed Location is to be treated as a new application for a Class B liquor license.

The Department will not substitute its opinion for that of the local town but rather will look,

for relevant material evidence rationally related to the decision at the local level. Arbitrary and capricious determinations, unsupported by record evidence, will be considered suspect. Since the consideration of the granting of a license application concerns the wisdom of creating a situation still non-existent, reasonable inferences as to the effect a license will have on a neighborhood must be logically and rationally drawn and related to the evidence presented. A decision by a local board or this Office need not be unassailable, in light of the broad discretion given to make the decision. *Kinniburgh*, at 17.

Furthermore, the Department has found as follows:

[T]he Department, often less familiar than the local board with the individuals and/or neighborhoods associated with the application, will generally hesitate to substitute its opinion on neighborhood and security concerns if there is evidence in the record justifying these concerns. To this end, the Department looks for relevant material evidence supporting the position of the local authority. (citation omitted). *Chapman Street Realty, Inc. v. Providence Board of License Commissioners*, LCA-PR-99-26 (4/5/01), at 10.

#### **A. Arguments**

The Board's reasons for its May 15, 2009 denial of the transfer application were four-fold: 1) the License had been granted but not issued; 2) the previous licenseholder (Shobar) was the source of significant complaints and closed after its renewal application was denied;<sup>11</sup> 3) Alon has no direct experience in operating a restaurant and/or an

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<sup>11</sup> See Board's Exhibit Thirteen (13) which is Shobar's licensing history. Said history states that the license was transferred from SPJS, Inc. on 10/31/05 which presumably was when Shobar came into existence though it isn't clear if the transfer was of an ongoing concern which the new owner kept or rather if the new owner opened his or her own establishment. However, between April 27, 2006 and January 29, 2007, there

establishment that serves alcoholic beverages; and 4) the proposed business plan did not adequately address the Board's and objectors' concerns. See Board's Exhibit Three (3). The Board's denied the reconsideration because neither the Police Department nor objectors withdrew their objections. See Board's Exhibit Four (4).

The Department's hearing is *de novo*. *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984) and *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). At the Department's hearing, the Board raised further objections to the transfer. The Board argued that Alon distanced herself from her husband at the Board hearings but at the Department hearing testified about her experience in assisting at Elements after testifying to the Board that she had never managed or run a club. While the Board's initial denial letter did not include Alon's marriage to Rosario as a basis for the denial, the Board argued at the Department hearing with the new testimony, the denial should be upheld because 1) Alon's experience at Elements which has disciplinary issues; and 2) her relationship with Rosario. Tr5 37-39; Tr3 50-62. The Board still relied on its reasons in its first denial letter. Tr5 39-40. Finally, the Board did not find Alon's experience of running Martini over the summer to be enough to grant the License on reconsideration. Tr5 42-43.

The Board argued that if Alon claims that her Elements' experience is a benefit then she must also accept Elements' disciplinary issues. Nonetheless, the Board argued that Alon essentially was a set of eyes for her husband which did not give her the requisite experience to run a club. The Board also argued that Alon's experience at Chez Ben totaled four (4) months that included having entertainment without a license. Tr5 43-46. Finally, during the hearing, the Board indicated that Alon's experience promoting

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were four (4) violations: first, \$500 penalty for entertainment without a license; second, warning for underage drinking; third, \$500 penalty for unspecified violation; and fourth, the denial of renewal of license because of fire code violations.



so-called “bad” clubs would disqualify her from obtaining a License but did not press this argument at closing. Nonetheless, I will address it below. Tr3 101-121.

In closing, the Appellants argued that the club is now open and the License had been previously granted to Menna without any objection. The Appellants argued that Shobar closed because of fire violations and its licensing history only shows one (1) count of underage drinking and two (2) counts operating without an entertainment license. The Appellants argued that in regards to Alon’s experience, she is seeking an entertainment license and not a restaurant license. The Appellants argued that the Board’s argument that Alon promoted “bad” club fails because none of the “bad” clubs ever had their licenses revoked for any violations. In addition, the Appellants argued that the Board did not present any evidence directly linking Alon to any of the “bad” clubs’ violations. Instead, the Appellants argue that Alon has experience running (not managing) Chez Ben and acting as her husband’s “eyes” at Elements. The Appellants argued that Alon is knowledgeable about security and will purchase an ID scanner to ensure 21 plus and has experience in preparing a menu and ordering liquor and has been managing the club for several months. The Appellants argue that Alon will operate independently and make her own decisions and is vested in succeeding because Menna will hold a promissory note over five (5) years. Tr5 17-20.

**B. Whether the Denial of the License Transfer Application Should be Upheld**

I will discuss the various reasons for the Board’s denial below.

**1. License Sought was Granted but Not issued**

After the first hearing on this application, one of the basis for the Board’s denial was that the License had been granted but not issued. Subsequent to the Board’s first

denial, Menna opened Martini with Alon as manager so that this reason is now moot. On February 4, 2010, the Board confirmed to the undersigned that Martini's License had been renewed for 2009-2010 so it is still open.

## **2. Shobar was Source of Significant Complaints**

The second reason in the Board's denial letter was that Shobar was the source of significant complaints from the police, fire, and neighbors and closed after its renewal was denied. In *DeCredico v. City of Providence, Board of License Commissioners*, DBR No. LCA-PR94-27 (1/20/95) ("*DeCredico I*"), the applicant's liquor license application was rejected because neighbors were concerned about the growing number of liquor-serving facilities in the vicinity and that the establishment would be "almost identical" to a past problematic tavern at the proposed location. The Department<sup>12</sup> found that at night the proposed establishment would attract a crowd similar to the previously problematic tavern. The Department found that the applicant was a proven restaurant operator but did not have the requisite experience of managing a late-night, full-bar drinking establishment to be able handle the potential problems that had plagued the area in the past. *Id.*, at 3-7.

Conversely, in *DeCredico v. City of Providence, Board of License Commissioners*, DBR No. LCA-PR94-26 (1/23/95) ("*DeCredico II*") upheld by *DeCredico v. City of Providence Board of Licenses*, 1996 WL 936872 (R.I. Super.), the applicants presented a well-financed project to open an upscale jazz club. Many neighbors objected to the application because of past problems with liquor licensees in the neighborhood. The decision found that the proposed club was likely to attract a different clientele from the

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<sup>12</sup> At the time of *DeCredico I*, the Liquor Control Administrator adjudicated said appeal. The position of Liquor Control Administrator was abolished by P.L. 1996, ch. 100 art. 36 § 4 with the Department assuming those functions. For ease of reference, any discussions of decisions issued by the Liquor Control Administrator will refer to the Department.

patrons of the establishments that created problems for the neighborhood in the past. Thus, the liquor license application was approved despite objections from the neighbors. The decision found that a licensing authority can move a neighborhood forward without duplicating past errors by denying application requests to those that are poorly planned or whose plan and locus are similar or identical to past problem spots. *Id.*, at 4-7.

In *Crazy 8's Bar/Billiards v. Providence Board of Licenses*, DBR No. 09-L-0042 (8/24/09), both parties (the Board and that applicant) agreed that the prior licensee at that proposed location had numerous problems with the Board and in fact, it had surrendered its license rather than have it revoked. In *Crazy 8's*, the applicant argued that it would be different from the prior licensee but the Board and the Department found that the applicant did not present sufficient evidence that it would be different type of licensee.

In this matter, the Appellants do not agree that Shobar was a problem licensee. Figueiredo testified generally that Shobar had issues with the police. Its licensing history shows that in the space of eight (8) months, it was fined twice for having entertainment without a license and warned once for underage drinking. See footnote 11. Its renewal was then denied because it was not compliant with the fire code. However, despite whatever problems Shobar may have had, the Board issued a new license to the same location in October, 2008. The Board apparently found that Menna's history as a Board licensee would overcome any problems that Shobar may have had at that location.<sup>13</sup> Menna has opened Martini and Alon is operating it.

However, assuming that Shobar was a problem licensee, there has been no showing that Sugar will be run like Shobar or has the same type of business plan. It may be that the

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<sup>13</sup> Indeed, one of the objectors (Wood) did not oppose a liquor license at that location but rather opposed Alon because of her relationship to Elements. Unlike *DeCredico I* or *Crazy 8's*, there was no evidence that any of Shobar's problems were caused (in part or in whole) by that location.

Board believed that Menna – as in *DeCredico II* – would offer a different type of establishment than Shobar but that is not in the record. The record indicates that the Board granted the License because “of the past saga of this building” and that it would be good for the landlord, Providence, and Rhode Island to have an operational business and that Menna had experience running a club. See Board’s Exhibit Five (5).

In light of the fact that the Board granted a License to the Shobar location after Shobar closed and there is no evidence that Alon will run Sugar like Shobar, the fact that the Police had problems with Shobar is not rationally related to the denial of Sugar’s application. Brooks and Wood both had generic concerns about the location but Figueiredo testified that there has been a liquor establishment in that location for at least 20 years and the Board granted a new liquor application in 2008.

### **3. Whether Alon Has Enough Experience**

The Board’s third reason for denial in its May 15, 2009 letter was that Alon had no direct experience in running a restaurant or an establishment that served alcohol. At the Board’s first hearing, Alon’s testified to her promotional experience. She did not testify at the Board’s hearing regarding her experience at Chez Ben and Elements though as the Board argued at the Department hearing, Alon did not have direct management experience at either of those two (2) clubs. However, since the May 15, 2009 letter, Alon has been directly managing Martini. For a discussion on Alon’s experience, see subsection seven (7) below.

### **4. Proposed Plan Inadequately Addressed the Board’s and Neighbors’ Concerns**

The neighbors’ (JWU and Cornish) and the police department’s concerns seem to center on underaged drinking and the relationship between Alon and her husband as co-

owner of Elements. Most likely, the Board was concerned since Alon and Rosario had previously applied for a transfer of license (Chez Ben) which had been denied but this application was solely in Alon's name. However, Brooks, Wood, and the police did not link Alon or Martini to any specific incidents. See *International Yacht Restoration School Inc. and Jose F. Batista v. Newport City Council and Dockside North, LLC et al.*, DBR No. 02-L-0037 (6/30/03) (while there were 42 objectors to the granting of the license, the applicants had relevant experience, the town followed a policy of business development, and the objectors did not focus on specific incidents related to the applicants). See also *Krikor S. Dulgarian Trust v. Providence Board of Licenses*, DBR No.: 08-L-0175 (6/18/09). Neighborhood objections can demonstrate the negative impact a proposed licensee may have. See *Crazy 8's; Domenic J. Galluci, d/b/a Dominic's Log Cabin*. However, in this matter such concern is too speculative especially as Cornish doesn't object to a liquor license at the location (just Alon) and Menna recently received a license from the Board obviating any concern over the location. Rosario's and Alon's relationship is further discussed below.

#### **5. Alon's Credibility Over Whether She Managed a Club**

As set forth in footnote eight (8), at the Board's hearing when Alon when asked if she had experience in running this type of club, she testified that she never managed a club. However, at the Department's hearing she testified that she had helped run Chez Ben and helped her husband at Elements. Her explanation was that she never held the title of a "manager." The Board's question was not whether she had held the title of manager but whether she had run a club. One would have thought she would want to specifically discuss her time at Chez Ben or Elements with the Board in order to

demonstrate that while she never held the title of manager, she was familiar with clubs and how they operate. She testified to the Board that she had “been around the business” but mostly referred to her promotional experience (See footnote eight (8)). The Appellants argued that Alon was not given enough time to testify before the Board. However, she was able to answer questions set by the Board including when the Board asked her if she had run a club. Obviously, it behooves any applicant to fully explain to the Board his or her pertinent experience in the “liquor” industry. For some reason, Alon chose to specifically highlight that experience on appeal rather than before the Board. However, Alon’s failure to do so at the Board hearing is not fatal to the application because she did not intentionally omit information that she knew could be fatal to an application (e.g. previous revocation of liquor license) but rather testified in broad terms that she had “been around the business.” As discussed below, Alon’s experience at Martini is the relevant experience.

#### **6. Alon’s Experience at Chez Ben and Club Elements**

Does the fact that Alon testified that she was her husband’s eyes at Elements mean that she is not qualified to run a club? The fact that she assisted at Elements’ door and patrolled the bars, etc., does not demonstrate her responsibility for any of Elements’ problems. She had no decision-making authority at Elements and there was no evidence that rationally related her activities there to any of its sanctions.

There was an issue of whether when Alon ran Chez Ben, it had an entertainment license. Alon testified she thought it did but the Board represented that it did not and Alon testified that it turned out to be a limited license. Alon testified that she acted as a manager but was not the manager. Obviously, the license holder is responsible for

complying with the statutory and regulatory requirements of a liquor license. Someone hired to run a club – in other words, a manager - should also be aware of such requirements. However, the evidence is there was someone else also acting as a manger and Alon was not hired to be a manager but was rather brought it to see if she wanted to buy the club. Obviously, such a role does not excuse responsibility for the club but in this matter, the only evidence is the Board’s representation that Chez Ben did not have an entertainment license some of the time Alon testified she was “test-driving” the club rather than owning or managing the club. Such a representation does not rise to rationally related evidence to find that Alon’s experience at Chez Ben disqualifies her from holding a liquor license.

Really what the Chez Ben and Elements experience demonstrate is that Alon is familiar with night clubs and how they operate. However, the better experience is Alon’s experience in managing Martini.

#### **7. Alon’s Experience at Martini**

Alon has been managing Martini since it opened. She is responsible for ordering liquor, the books, booking promoters, determining the menu, and hiring, firing, and scheduling all staff. At the time of the hearing, Alon had been managing Martini for five (5) months. While the record closed at the end of the hearing, the Board has not moved to reopen this matter on the grounds of any discipline against Martini. Therefore, it can be assumed that she now has ten (10) months of such direct experience. At the first Board hearing, Alon did not have this direct experience.

Unlike *Decredico I* and *Crazy 8’s*, Alon has both experience in business (retail and club promotions) and experience in managing the unique requirements of a liquor

establishment. Unlike in *Crazy 8's*, Alon is fully knowledgeable about her business plan and has implemented it since May, 2009. Unlike in *Crazy 8's*, Alon is knowledgeable about her likely clientele, staffing structure, liquor inventory, and the menu.

In addition, Menna testified that Alon was managing Martini well. Obviously, Menna has a financial stake in the outcome of this appeal but he also has a financial stake in Alon receiving the License and successfully using the License as her payments to him continue over five (5) years. Menna has many years of experience owning and managing liquor establishments. The Board had no reservations in granting him a License. His testimony regarding Alon's experience and ability in managing Martini was credible.

#### **8. Alon's Promotional Experience**

Alon also has promotional experience. Some of it is as basic as in she would hire a photographer to take photographs in a club and put them on a website but some is more hands-on as in being responsible for bringing in crowds and setting up events. Some of the clubs that she promoted for had violations over the time that she promoted for them and some did not. Tr3 101-121. See Board's Exhibit 15 (Chez Ben: entertainment without a license violation in 2009 after she stopped being there); Exhibit 16 (Finnegan's: one warning in 2007 for entertainment without a license; no evidence that she promoted that event); Exhibit 17 (Lupo's/Roxy: one warning in 2007 for flyers but no evidence that those were Alon's); Exhibit 18 (Mi Sueno: fine for underaged drinking and illegal activity in 2007 but no evidence related to any 2007 promotions by Alon). It may be possible that a promoter could be involved in a liquor licensee's statutory violations if for example, a promoter was controlling the door and allowed in too many people but there is no evidence of such a link between Alon and the clubs she promoted for and their



violations. Furthermore, a license holder is ultimately responsible for any such failures. Thus, there was no rationally related evidence at hearing between Alon's promotional experience and her being disqualified from receiving the License.

### **C. Conclusion**

As articulated through liquor licensing decisions at the State court level and the Departmental level, the standard of review for a new license is subject to the discretion of the issuing authority. Such discretion must be based on reasonable inferences drawn from the evidence. Arbitrary and capricious determinations not supported by the evidence are considered suspect. *Infra*. In light of the broad discretion given to the Board, the undersigned only reviews the Board's decision for evidence to support it. The Board's decision need not be unassailable but rather there must be evidence to support the Board's decision.

The Board argued that Alon convinced the Board that Rosario would have no relationship with Sugar and the Board still denied the application. The Board argued that at the Department hearing, Alon's testimony about her experience with Elements just gave the Board more reasons for its denial. The main concern by the police, JWU, Cornish, and the Board appears to be that Alon is inexperienced so that Sugar will be operated like Elements and that would be bad. e.g. Board's Exhibit One (1) (police filed objection "based on applicants (sic) association with other problem establishment (Elements)."). Separate and apart from whether Elements is "bad" and is operated badly, the fact remains that Rosario may be married to Alon but both testified that Rosario will have no input in any decisions regarding the managing and operating of Sugar.

The testimony of Alon and Rosario is that Sugar and Elements appeal to different patrons. Sugar will be over 21 years at night as opposed to Elements which is under 21. Alon testified that her music entertainment will be different from most downtown clubs. Both testified that Rosario will have no responsibility for or association with Sugar. The capacity of Elements is approximately 400 as opposed to Martini's capacity of 148. Sugar's business plan is to market itself as a funky high-end bar restaurant targeting businessmen/women, couples, and high-end singles and as a casual bar and lounge as opposed to a high capacity dance club. See Board's Exhibit Two (2) (business plan).

A licensee is not obligated to stay with the business plan presented to the board but if a licensee changes its business plan and that causes problems, the local licensing authorities often take a dim view.<sup>14</sup> However, under *Thompson v. East Greenwich*, 512

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<sup>14</sup> As discussed in *Vosler Inc. d/b/a Café Four 12 v. Providence Board of Licenses*, DBR No. 07-L-0001 (3/29/07):

The Department has previously ruled on the issue of a change in business format and disorderly conduct that may arise from such a change and such decisions inform the review of this matter. In *C & L Lounge, Inc. d/b/a Gabby's Bar and Grill; Gabriel Lopes v. Town of North Providence and the North Providence Town Council*, LCA-NP-98-17 (4/30/99), the Department modified the town's revocation of the license to a thirty (30) day suspension.

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In *Gabby's*, the licensee's owner represented at its licensing hearing that it would create a family dining atmosphere but at the revocation hearing, he testified that he had to diversify its format. *Gabby's* found that the licensee had adopted a new business format that caused regular disorderly incidents and that it had been warned by the town but had continued to operate with that type of business. The decision found that when a licensee changes its business format, it does so at its own peril and must face the consequences:

There is nothing per se illegal about a licensee changing his business format without Town approval to maximize profits. However, a Town need not tolerate a business format yielding negative neighborhood conditions it never bargained for, and specifically warned against, at the time of licensure.[footnote omitted] A liquor licensee has the responsibility to follow through on his representations of how he will conduct his business, made at the time of licensure. When a liquor licensee shifts his business format from his representations, he does so at his own peril. In the instant case the result of the shift was volatile disorderly conditions warned against as a condition of licensure. *Gabby's*, at 15.

*Vosler*, at 15-16.

See also *Tropics, Inc. d/b/a Club Tropics v. City of Warwick, Board of Public Safety*, LCA-WA-97-05 (2/28/97) (revocation justified when *Tropics*' initially opened, it had an age 21 and over policy on

A.2d 837 (R.I. 1986), a town may grant a liquor license upon conditions that promote the reasonable control of alcoholic beverages.<sup>15</sup> See *Newport Checkers Pizza, Inc. d/b/a Scooby's Neighborhood Grille v. Town of Middletown*, LCA-MI-00-10 (12/7/00) (Department upheld Town's condition of an early closing of 11:00 p.m. as reasonable under *Thompson* to balance interests of neighbors and licensee). The evidence presented by the Board is that since Alon is married to Rosario, there is a connection between them that could negatively influence Sugar.<sup>16</sup> Both have testified that Rosario and the Elements' management will have no say over Sugar. However, the Board's concern over underaged drinking and any connection with Rosario and Elements is easily addressed.

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Friday and Saturday nights and one (1) year later started to allow all ages fourteen (14) and over as a way to compete with Providence clubs) and *Picasso's Pizza and Pub, Inc. d/b/a Score's RI Ultimate Sports Pub v. North Providence Board of License Commissioners*, DBR No. 03-L-0250 (6/3/04) (town found the licensee was operating its business contrary to the representations on which the license was granted which eventually resulted in a suspension).

<sup>15</sup> *Thompson* relied on R.I. Gen. Laws § 3-1-5 and R.I. Gen. Laws § 3-5-21.

R.I. Gen. Laws § 3-1-5 states as follows:

Liberal construction of title. – This title shall be construed liberally in aid of its declared purpose which declared purpose is the promotion of temperance and for the reasonable control of the traffic in alcoholic beverages.

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.

*Thompson* found R.I. Gen. Laws § 3-5-21 allows municipalities to impose conditions on liquor licensees in accordance with R.I. Gen. Laws § 3-5-1 which restricts such conditions to be in the promotion of the control of alcoholic beverages. Subsequent to *Thompson*, the Supreme Court has addressed the issue of whether a town may pass an ordinance that affects liquor licensees as a group. *El Marocco Club, Inc. v. Richardson*, 746 A.2d 1228 (R.I. 2000) found that 1997 amendment to R.I. Gen. Laws § 3-7-7.3 specifically endowed all cities and towns with the power to restrict or prohibit entertainment in Class B liquor licensees but that only clarified what had been already authorized in R.I. Gen. Laws § 3-1-5 and R.I. Gen. Laws § 3-5-2. See also *Amico's Inc. v. Mattos*, 789 A.2d 899 (R.I. 2002). *Thompson* related to an individual licensee who agreed as a condition of licensing to abide by certain conditions (which the town was requesting all licensees agree to but had not made part of a liquor ordinance).

<sup>16</sup> The undersigned is aware of the concern about an applicant for a license being a front for the real party in interest who would be disqualified from obtaining the license. See *In the Matter of: Laura Ricci d/b/a All-Rite Auto Body, Inc.*, DBR No. 00-L-0082 (3/13/01). However, the Board is not arguing that Alon would be a front for Rosario. Rather, the Board presented generic concerns by Wood, Brooks, and the police of potential influence by Rosario and/or Elements on or at Sugar.

This decision has reviewed the various reasons for the application denial and has found that the various reasons are not rationally supported by the evidence. The totality of these reasons do not support a denial of the License once certain conditions are imposed pursuant to *Thompson*. The imposition of conditions on the granting of the License ensures that this situation remains as presented by and testified to by Alon and her interests and the Board's concerns about a liquor and entertainment venue are met. See *Scooby's*. The conditions provide for the reasonable control of alcohol by ensuring that the Appellants are held to their representations to the Board and the Department so that the findings that the denial was not warranted remain based in fact.

Therefore, this License shall be granted upon the following conditions:

1. Sugar and Alon shall notify the Board prior to any intention to bring Rosario or any of Element's co-owners (at the time of this decision) in as a manager, partner, promoter, or any other kind of business relationship regarding Sugar and request permission from the Board to do so.<sup>17</sup> The Board may hold a hearing on the request or may make a written determination to either accept or reject the request.

2. The evening admission to Sugar shall be 21 plus. If Sugar and Alon want to change admission in evenings to under 21 years,<sup>18</sup> they shall notify the Board of that intention and request permission from the Board to do so. The Board may hold a hearing on the request or may make a written determination to either accept or reject the request.

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<sup>17</sup> It should be noted that this decision is not making a finding that Rosario or the other Elements' co-owners should not hold liquor licenses. Rather, this decision is merely imposing conditions that reflect what Alon has testified to so that the License is specifically granted on her representations.

<sup>18</sup> It should be noted that R.I. Gen. Laws § 3-7-16.6, the Class N statute, does not mandate that patrons under 21 years must be admitted to nightclubs but rather sets forth requirements for an establishment to follow if they choose to allow patrons under 21 years entrance. Alon's testimony is that she will not be permitting patrons under 21 years.

3. Sugar and Alon shall use an ID scanning machine. Failure to do so may result in sanctions by the Board for non-compliance with a licensing condition.

4. Alon and Sugar shall notify the Board of any intention to increase the capacity prior to the filing of such a request with the appropriate fire authorities and request permission from the Board to do so. The Board may hold a hearing on the request or make a written determination to either accept or reject the request.

5. Separate and apart from any requirement on its Entertainment license, Alon and Sugar shall provide by the first of every month, a listing of its “theme” nights and entertainment thereto.

6. These conditions may be augmented by the Board, if necessary, because of new facts or circumstances.

7. These conditions shall be reviewed by the Board upon any renewal application filed for the licensing period of 2010 to 2011 and the Board may decide to vacate all, some, or none on them upon granting (if granted) the renewal.<sup>19</sup>

8. The discovery by the Board that any of the testimony given at hearing was erroneous or constituted a misrepresentation of the facts presented would be grounds to revisit the granting of this License.

## **VI. FINDINGS OF FACT**

1. On or about May 13, 2009, the Board denied the Appellants’ application to transfer the License from Martini to the Appellants.

2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellants appealed this decision by the Board to the Department.

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<sup>19</sup> It should be noted that if the Appellants do request the lifting of conditions and the Board denies the same that may be appealed under the relevant statutes to the Department as a (partial) denial of a renewal of license.

3. The appeal was held in abeyance while the Appellants filed a motion for reconsideration of the denial with the Board which was heard on or about August 17, 2009 and denied.

4. The Appellants again appealed the Board's decision to deny the Appellants' application.

5. This *de novo* hearing was held on September 18, 24 and October 8, 15, and 27, 2009, before the undersigned sitting as a designee of the Director. The parties rested on the record.

6. Rosario has no management or ownership involvement with Sugar.

7. None of the current co-owners of Elements have any management or ownership involvement in Sugar

8. Sugar will be 21 years plus in the evenings but not at lunch time.

9. Alon plans to purchase a 21 years plus ID scanning device for Sugar and to use it.

10. Sugar's capacity is 148 and Alon has no plans to increase the capacity.

11. 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 § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

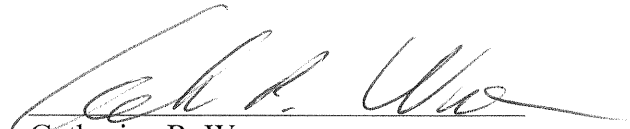
2. Based on the forgoing, the imposition of conditions on the granting of the License ensures that this situation remains as testified to and presented by Alon and her

interests and the Board's concerns about a liquor and entertainment venue are met. See *Scooby's*.

**VIII. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends that the decision of the Board denying the transfer of the location of the License be overturned and the License be granted with the conditions set forth above in Section V.

Dated: March 8, 2010

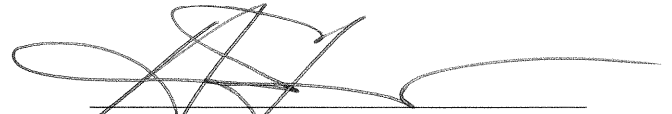
  
Catherine R. Warren  
Hearing Officer

**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: 03-09-2010

  
A. Michael Marques  
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 DECISION 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 9<sup>th</sup> day of March, 2010 that a copy of the within Decision was sent by first class mail, postage prepaid, to

Maxford Foster, Esquire  
City of Providence Law Department  
275 Westminster Street  
Providence, RI 02903

Christopher J. Petrarca, Esquire  
Petrarca Law Offices, LLC  
330 Silver Spring Street  
Providence, RI 02904

and by electronic delivery to Maria D'Alessandro, Associate Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Bldg. 68, Cranston, RI.

AB Ellison