

III. ISSUES

Whether the Appellant was in violation of R.I. Gen. Laws § 3-5-23 on November 27, 2016 and if so, what sanction(s) should be imposed.

IV. MATERIAL FACTS AND TESTIMONY

The parties relied on the Board's record regarding the November 27, 2016 incidence.³

Sergeant Paolo, Providence Police Department, testified on behalf of the City. He testified that he was detail at the Appellant on November 27, 2016 from approximately 11:00 p.m. to 2:00 a.m. along with Officer Francis and was stationed at the front door. He testified that the club reached capacity of about 185 patrons and approximately four (4) or five (5) people were escorted out of the club at different times. He testified that the Appellant has a 2:00 a.m. closing time, but closed ten (10) minutes early that night. He testified that as the patrons were exiting, a large disturbance broke out and there were at least 30 to 40 people fighting on Washington Street. He testified that it started as one fight and then little pockets of disturbances broke out. He testified that they called for assistance and about 18 police cars responded. He testified that the Roxy, a nearby club, was closed the whole night. He testified that next door is the Rosendale which he understood locked its doors because of what was happening outside. He testified that some of the officers had to deploy pepper spray. On questioning from the Board, he testified that there were two (2) gangs from Boston that came down to see the performance at the club. He testified that the Appellant had a lot of security and reacted appropriately. He testified that after the patrons were thrown out earlier from the club, he ensured that they crossed the street. He testified that there were about 40 people fighting.

³ The Board record did not include the transcript of December 21, 2016 when the Board made its decision, but included the decision letter.

Sergeant Scott McGregor, Providence Police Department, testified on behalf of the City. He testified that on said night, he was in charge of the downtown detail and he went to the Appellant slightly before 2:00 a.m. and about five (5) minutes later people started leaving. He testified as the group started to exit the club, they started to fight and a large disturbance erupted in front of the club. He testified that he, Paolo, and Officer Francis used pepper spray to quell the disturbance and the Appellant's security used a pepper spray canister about the size of a fire extinguisher. He testified that many units responded and it took about 20 to 30 minutes to control. He testified that he was informed by security about a stabbing. There was no cross-examination.

Officer Brian Muldoon, Providence Police Department, testified on behalf of the City. He testified that on said night, he responded to a call, but was flagged down and got out of his car at the intersection of Fountain and Union Streets. He testified that he found someone who had a large bloodstain on the front of his shirt and who wanted milk for the pepper spray since his eyes were red. He testified that the man was uncooperative, but he observed an apparent stab wound on his front and back. He testified that rescue picked the man up.

Detective Matthew Cute testified on behalf of the Board. He testified that he responded to the hospital for a stabbing on November 27, 2016 and met with the victim the next day. He testified that the victim told him he had been a patron at the Appellant and there was a disturbance after closing and he was attacked by an unknown person.

Sergeant David Tejada testified on behalf of the City. He testified that he obtained security videos of this incidence from the Biltmore garage. He testified that on one video, just before 2:00 a.m., a large disturbance breaks out with numerous patrons, police, and security. He testified that the orange blasts are pepper spray. He testified that later two male patrons were in a doorway on Union Street and someone goes to the doorway and attacks the victim. He testified that he

identified the attacker in the video prior to the attack and he had been affected by the pepper spray. He testified that the attacker and the victim all emerged from the initial disturbance. There was no cross-examination.

Along with testimony, security videos taken outside of the Appellant were entered into evidence. The video evidence included three (3) different street views taken by video. Two (2) of them were taken on Union Street where the Appellant is located. The two (2) Union Street videos apparently show either side of the club entrance, but not the entrance door. The other video is of the intersection of Washington Street and Union Street.

A review of the Washington Street and Union Street intersection⁴ shows that at 1:57:40 a.m., there were about four (4) or five (5) people standing at the corner and a mounted police officer goes down Union Street. At 1:59 a.m. there are still just a few people there, then the police horse comes up from Union Street. At about 1:59:16 a.m., a couple more people come up Union Street. At 1:59:35 a.m., a large group of people comes up the street with people looking back and some holding their eyes. At 1:59:55 a.m. a woman is bent over and coughing. There about 20 people crossing the street, and there is no pushing. By 2:00:10 a.m., more people cross the street. At 2:07 a.m., there are a few people gathered on the corner talking to an EMT. The EMT is helping a woman who eventually at 2:22 a.m. gets into the rescue truck. At 2:12 a.m., there are about five (5) to seven (7) police officers standing in the street and about maybe five (5) people standing on the street corner. By 2:27 a.m., the rescue is gone and there are still a few police officers. The corner is pretty clear by 2:10 a.m. except for the group near the woman sitting with the EMT.

A different video⁵ shows Union Street from opposite the club facing toward Washington Street. At 1:51 a.m., the two (2) police officers (presumably the detail) are standing in front of the

⁴ Channel three (3) on the video.

⁵ Channel seven (7) on the video.

club, and there are some people walking down. At 1:52 a.m., there are some people walking down the street opposite the club and a minute later, there are some people standing across the street on the sidewalk, and there are some people standing in front of the club door. At 1:55 a.m., more people walk up Union street and EMT's walk down the street. At 1:56 a.m., a group of people start to come into frame on the street coming from the non-Washington Street side. There seems to be some pushing as the two (2) detail officers come over at 1:56:16 a.m. and move them along. At 1:57 a.m., there are about ten (10) people across the street on the sidewalk, some people in the street, and about 10 to 15 people on the sidewalk in front of the club. A group of people walk up the street. At 1:57:35 a.m., a mounted police officer comes down the sidewalk opposite the club. There is also a police officer walking in front of the mounted officer. They are clearing the sidewalk opposite the club. At 1:58:17 a.m., the horse and the police officer clear the sidewalk opposite the club. At 1:58:33 a.m., there are people in the street and some people are on the sidewalk to the left of the door that can be seen on the video. People are being moved up the street away from the club toward Washington Street. The detail officers are standing on the sidewalk in front of the club. At 1:58:24 -1:58:55 a.m., it looks like there are some people arguing in front of the rescue truck (parked on Union Street on the club side). At 1:58:56 a.m., there is a push by the rescue truck. At 1:59:03 a.m., there is more pushing and at 1:59:06 a.m., there is pushing and shoving on the sidewalk (opposite the club). At that time, the detail officers go over to the group in the street and then at 1:59:12 a.m., people come running down the sidewalk opposite the club, rubbing their eyes. By 1:59:24 a.m., people are covering their eyes and walking down the street away. The scuffle is done by 2:00 a.m. and by 2:01 a.m., there are a few people on the street. By 2:10 a.m., the street is clear except for one (1) man on the sidewalk.

There is also a video⁶ of Union Street taken across the street from the club but looking not toward Washington Street but away from Washington Street. At 1:55 a.m., two (2) police officers walk up Union Street (toward Washington). At 1:56 a.m., there are about 20 people on the sidewalk opposite the club and about 10 to 15 people in the street. There are two (2) police officers that apparently are not the detail standing on the sidewalk on the same side as the club. At 1:56:45 a.m., there are about 40 people and a little pushing in the street, but the two (non-detail) police officers do not come over. At 1:58:14 a.m., the police officer on the horse comes into view and people are walking up the sidewalk and the street (toward Washington Street). At 1:58:36 a.m., the horse is not seen but police officer that had been walking with the mounted officer is. At 1:59 a.m., the other two (2) non-detail officers walk quickly/jog down Union Street (away from Washington Street). At 1:59:12 a.m., people are looking up the street toward Washington Street. At 1:59:30 a.m., about 15 or 20 people run down the Union Street sidewalk away from Washington Street. At 1:59:50 a.m., a mounted police officer goes up Union toward Washington Street. At 2:00 a.m., there are people on the sidewalk, but no fighting. At 2:00:10 a.m., two (2) police officers start walking up Union toward Washington. At 2:00:42 a.m., two (2) of the Appellant's security staff members are in the street. At the 2:00:55 a.m. the stabbing victim and his companion walk out of a doorway and into another doorway at 2:01:24 a.m. At 2:01:38 a.m., someone darts into the doorway and stabs the victim. The victim runs across the street holding his back. At 2:01:45 a.m., the victim is on the sidewalk. There is some pushing and running. The victim is chased down the street at 2:02 a.m. At 2:02:14 a.m., the two police officers (non-detail) come down the street. By 2:04 a.m., there are three (3) people on the street.

⁶ Channel four (4) in evidence.

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).

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); *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964); and *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964). Thus, while there was not a totally 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. Therefore, this appeal is not bound by the Board’s reasons for suspension but whether the Board presented its case for suspension before the undersigned. The undersigned will make her findings on the basis of the evidence before her and determine whether that evidence justifies said suspension.

The Department reviews sanctions to ensure statewide consistency and appropriateness in the situation. It also supports progressive discipline barring the rare and extreme event where revocation may be warranted without prior discipline. It also accepts the principles of comity and deference to the local authorities and their desire to have control over their own town or city. At the same time, pursuant to R.I. Gen. Laws § 3-2-2 and R.I. Gen. Laws § 3-7-21, the Department ensures that tensions between local boards and licensees are settled in a consistent manner. Nonetheless, there is not a mechanical application of sanctions as each matter has its own sets of circumstances. See *C&L Lounge, Inc. d/b/a Gabby's Bar and Grille; Gabriel L. Lopes v. Town of North Providence*, LCA – NP-98-17 (4/30/99). At the same time, a sanction cannot be arbitrary and capricious. The unevenness of the application of a sanction does not render its application unwarranted in law but excessive variance would be evidence that an action was arbitrary and capricious. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation for a series on infractions). See *Jake and Ella's v. Department of Business Regulation*, 2002 WL 977812 (R.I. Super.) (R.I. Super.) (overturning a revocation of a liquor license as arbitrary and capricious).

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). See also *Scialo v. Smith*, 210 A.2d 595 (R.I. 1965). 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. Arguments

In closing, the City argued that there was evidence of more than 40 minutes of chaos. The City argued that since the patrons fought as they left, it can be inferred that something happened inside. The City argued that it might be difficult to pinpoint where the assailant was except for the fact that the Appellant was the only club open and both participants had been pepper sprayed. The City argued that there have been 15 violations in the last three (3) years including two (2) disorderly conduct violations so that the suspension is appropriate under progressive discipline.

In closing, the Appellant argued that the fight was more like ten (10) minutes rather than 40 minutes. The Appellant argued that by 2:09 a.m., Union and Washington Streets are clear. The Appellant argued that some patrons were thrown out and the detail officer testified that he made sure that they crossed the street. The Appellant argued that the evidence was that the club emptied about 2:00 a.m. and there was no allegations of anything going on inside the club except for those people being thrown out earlier so no link can be made between the club and the outside disturbance. The Appellant argued that there was no dispute that a man was seen outside the building at 2:00:57 a.m. and then is seen in the alcove at 2:01:32 a.m. stabbing someone. However, the Appellant argued that there is no link to that and the club or to the outside disturbance.⁷

⁷ The Appellant argued that based on evidence at the hearing, there is a mitigating issue about rival gangs coming that night from Massachusetts to the Appellant that the Providence police knew about (from the Boston police) but never told Appellant. The Appellant argued that the Providence police did not tell Appellant because they wanted to grab the gang members and close the club. The Appellant argued that the police should not have let the fight fester and should have told the Appellant about potential problems that night.

The City argued that the police have a duty to protect the public and choose how to do that. The City argued that there is not enough information to say whether the police should or should not have notified the Appellant and there is no requirement for the police to notify the establishment. The City argued that there was no evidence that the people in the altercation were involved in a gang and the City was not pursuing that angle.

The issue before the undersigned is whether there was disorderly conduct for which the Appellant was responsible. Whether the conduct was related to the gang is not before the undersigned. The issue of how the police handle information about potential gang members at clubs is not within the purview of statutory liquor appeal.

D. Sanctions Prior to November 27, 2016

This License was transferred on January 9, 2015 to the current licensee. It was penalized in 2015 twice for a variety of violations with a total of \$2,400 in fines imposed and an one (1) day suspension. In 2016, it was penalized three (3) times including the imposition of a mandatory police detail at the weekend for disorderly conditions. It also had violations in 2013 and 2014 for a variety of violations that resulted in administrative penalties and a two (2) day suspension.

E. When Sanctions are Imposed

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 imposing a sanction on 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 v. Smith*, 202 A.2d 292, 295-6 (R.I. 1964) 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, 859 (R.I. 1980).

A liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali v. Smith*, 254 A.2d 766 (R.I. 1969). It is not a defense that a licensee is not aware of the violations or provided supervision to try to prevent 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 (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. See also *AJC Enterprises; Schillers*; and *Furtado v. Sarkas*, 118 R.I. 218 (1977).

The Department has a long line of Department cases regarding progressive discipline and upholding the same. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.). The progressive discipline imposed on a licensee depends on the violations and the circumstances of a licensee’s violation(s). 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). The sanctions

imposed for R.I. Gen. Laws § 3-5-23 vary depending on the type of disorderly conduct. Very serious and egregious violations that involve weapons and/or serious assaults could result in a revocation of license. E.g. *Cardio Enterprises d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (license revoked for murder that arose at bar). A long suspension may be imposed for severe disorderly conduct. E.g. *C & L Lounge, Inc.* (30 day suspension for severe disorderly conduct but not so severe as to merit revocation).

F. November 27, 2016

There is a very strict requirement that makes a licensee responsible for actions inside a licensed premises and those outside activities that arise from inside even if the licensee did not know of the actions or tried to supervise its patrons and prevent the activities. However, in order for the Appellant to be responsible there must be some kind of activity for which it is responsible for and from which it can be inferred the fighting arose. See *A.J. C. Enterprises* and *Cesaroni*. See also *Salacruz, LLC d/b/a Sky Lounge v. City of Providence Board of Licenses*, DBR No. 14LQ046 (11/25/14); and *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).

In *D. Liakos d/b/a Van Gogh v. Providence Board of Licenses*, DBR No.: 16LQ011 (10/31/16), there was no evidence of any disturbance starting inside the bar and spilling outside where it culminated in the fight. In that matter, the Board found that there had been no disturbance inside the club. Thus, no inference could be made that the fighting that occurred outside after the patrons exited the club was somehow indirectly related to something that had happened in the club.

In this matter, the City argued that as there was already fighting among the patrons as they exited the club so that an inference could be made that the fighting started within the club. The

videos do not show the patrons directly leaving the club exit (the videos apparently showed either side of the exit door) but showed the patrons right after they exited. The testimony was that the other nearby club was closed that night. The City argued that the only people on Union Street were from the club. A review of the video shows that the club was the only business open at the time and is not on a street that other businesses' patrons would be walking by. It can be determined that the people on the street were exiting from the Appellant.

In *Ocean State Hospitality, Inc. d/b/a Fatt Squirrel v. Providence Board of Licenses*, DBR No.: 16LQ002 (3/31/16), a patron was ejected and a crowd followed the patron outside and milled around with some dispersing and some staying and some fighting. Eight (8) minutes after the patron was ejected, a shooting occurred (no injuries) and a patron was punched outside. With the large crowd of people exiting that club as a result of the ejection, it was reasonable to infer that the shooter was connected to the crowd that spilled out of that club and that the victim who had left the club was punched as a result of the mass exit from the club.

In this matter, there was no ejection of a patron linked to the fighting, but rather the patrons exited shortly before closing time. The video shows some pushing and shoving in some knots of the patrons while exiting or right thereafter. Thus, there can be an inference that the pushing and shoving that culminated in the pepper spray was indirectly related to something happening inside the club upon exiting. The scuffling was over in a couple of minutes and the area cleared within ten (10) minutes. The videos do not show 40 minutes of chaos. Instead, they show a short and quickly contained disturbance that was quickly dispersed.

It was undisputed that the attacker and the victim had been pepper sprayed and had been patrons of the club. In the *Fatt Squirrel*, the shooting could be inferred to be related to the disturbances that arose out of the crowd following the ejected patron outside since the disturbance

outside was ongoing after everyone followed the ejected patron outside. In this matter, there was pushing and shoving as patrons exited which resulted in pepper spray and the end of the scuffling. The stabbing took place between the patrons a couple of minutes later. The scuffling that resulted in the pepper spray took place on Washington Street right before the intersection. The fighting never made it to the intersection. The fighting never made it to further away on Union Street. The video of the intersection **and** the video of Union Street looking away from Washington Street do not show fighting. They show people running from the pepper spray, but no ongoing fighting.

A review of the video shows that right before the stabbing the street was calm and there was no fighting. Indeed, two (2) police officers walked up the street without incidence. The disturbance in this matter had been cleared before the stabbing. The stabbing was not part of the ongoing disturbance (the pushing and shoving) that has been indirectly linked to the Appellant as that had been cleared. There is no evidence linking the unidentified assailant to the victim in the club. The stabbing was not part of the pepper spray scuffle. There was no evidence that something happened in the scuffle that caused the unidentified assailant to stab the victim. The City wants to infer that the stabbing and scuffling are both indirectly related to something that happened upon exiting. However, the stabbing did not happen during the scuffling (like in the *Fatt Squirrel*), but rather the area was clear and calm prior to the stabbing. There is no other evidence in this matter that could indirectly link the stabbing to the Appellant.

Yes, the attacker and victim had been patrons and had been pepper sprayed, but without the type of link in *Fatt Squirrel* - the shooting and punching were part of the ongoing disturbance - it is harder to make that link. Rather the stabbing is more in line with *El Tiburon* in that while the attacker and victim had been patrons, it cannot be inferred that the attack had something to do with the pushing and shoving which had already been cleared.

G. What Sanction is Justified

From *Cesaroni* in 1964 to *Schillers* in 1980 up until today, a liquor licensee is responsible for activities inside and outside its licensed premises. It does not matter how well a liquor licensee supervises such responsibilities since even the most responsible supervising licensee is still responsible for disorderly conduct. See *Therault*.

As discussed above, the sanctions imposed for R.I. Gen. Laws § 3-5-23 vary depending on the type of disorderly conduct. Very serious and egregious violations that involve weapons and/or serious assaults could result in a revocation of license. E.g. *Cardio Enterprises*. A long suspension may be imposed for severe disorderly conduct. E.g. *C & L Lounge, Inc. d/b/a Gabby's Bar and Grill; Gabriel Lopes v. Town of North Providence*, LCA-NP-98-17 (4/30/99) (30 day suspension for severe disorderly conduct but not so severe as to merit revocation). In *JJAM Sports, Inc. d/b/a LaCabana Night Club Sports Bar and Grille, Inc. v. Lincoln Board of License Commissioners*, LCA-LI-99-05 (12/27/99), the Department uphold a two (2) day suspension for a fight inside the bar and a second fight outside in the parking lot with the patrons refusing to leave and police (including from the adjoining community) being called to clear the patrons and a police officer had a beer bottle thrown at him. More recently, *DL Enterprises d/b/a East Bay Tavern v. East Providence City Council*, DBR No. 14LQ009 (4/28/14), the Department reduced revocation to a 14 day suspension for fighting inside bar where there was allegations of stabbing but no positive identification of a weapon.

In the *Fatt Squirrel*, the licensee had an administrative penalty once in the three (3) years it had been open. Its license was suspended for 14 days for the disorderly conduct for the night of the shooting and a scuffle on another night. In *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ022 (6/24/14), the licensee received a two (2) day

suspension for disorderly conduct when two (2) drunk patrons that had fought inside (but not physically) were escorted outside where they were belligerent but not physical. That licensee had recently had a five (5) day suspension for nuisance and a seven (7) day suspension for various violations such as overcapacity and drinks advertising and a disturbance so that a two (2) day suspension was imposed for the disorderly conduct despite it not being physical.⁸

In this matter, the Appellant had a ten (10) day suspension imposed for the disturbance and stabbing. The Appellant has served seven (7) days. As the stabbing cannot be directly or indirectly linked to the scuffling, the ten (10) day suspension is reduced to seven (7) days for the disturbance which is consistent with past progressive discipline of licensees. The Appellant already is subject to a mandatory police detail on the weekends so the Department makes no order regarding a detail.

H. Administrative Penalties

The Appellant raised the issue of the administrative penalties imposed by the Board. Pursuant to R.I. Gen. Laws § 3-7-21, the Department does not have authority to hear appeals of fines. However, the Superior Court found that the Department has implied jurisdiction to review administrative fines imposed by local boards pursuant to R.I. Gen. Laws § 3-5-21. See *The Rack, Inc. d/b/a Smoke v. Providence Board of Licenses*, et al. CA No. PC 2011-5909 (7/22/13). The Court found that the Department did not have to apply a *de novo* standard of review to appeals of administrative fines but that the Department must review the record and articulate and document a substantial, non-arbitrary rationale for invoking its discretion to dismiss appeals of fines imposed by local licensing boards and that the exercise of such discretion must be reasonable. The Court further found that if the monetary fine imposed on a licensee by a local liquor licensing board is within statewide limits set by statute

⁸ See *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ054 (12/3/14) for its further discipline.

then such a finding by the Department may be sufficient basis for the Department to dismiss a licensee's appeal. *Id.* at pp. 14-17.

R.I. Gen. Laws § 3-5-21(b) provides that a first offense by a liquor licensee shall be fined \$500 with the fine for each subsequent offense not to exceed \$1,000. R.I. Gen. Laws § 3-5-21 establishes minimum fines for violations. Thus, the first offense is for any offense of the liquor licensing law and the subsequent offense is for any subsequent offense of the liquor licensing laws rather than pinpointing whether the violation is the first or subsequent offense of a specific statutory or regulatory violation. This interpretation is supported by the fact that the statute provides for a clean slate for all offenses if the licensee has not had any offenses for three (3) years. In other words, the first offense of the liquor statute cannot be fined more than \$500 with each subsequent offense of the liquor licensing law not being fined more than \$1,000 but if the licensee has no offenses for three (3) years, the clock is re-set and any violation would be considered a first offense.

In this matter, the City imposed an administrative penalty of \$1,500. The Appellant already had administrative penalties imposed within three (3) years prior to this violation so that an administrative penalty of \$1,000 per violation is appropriate. The Appellant violated R.I. Gen. Laws § 3-5-23 (disorderly). Therefore, a maximum administrative penalty of \$1,000 is permitted for a violation of R.I. Gen. Laws § 3-5-23 so that the administrative penalty is reduced to \$1,000.⁹

VI. FINDINGS OF FACT

1. On or about December 21, 2016, the Board notified the Appellant that its License had been suspended for ten (10) days and an administrative penalty of \$1,500 had been imposed.
2. Pursuant to R.I. Gen. Laws § 3-7-21 and R.I. Gen. Laws § 3-2-2, the Appellant appealed this decision to the Director of the Department.

⁹ It is unclear from the decision letter what violations the \$1,500 penalty represented since the decision also found a local ordinance violation. However, the maximum penalty for the disorderly conduct is \$1,000.

3. On January 3, 2017, the Department issued a partial stay of the Board's suspension of License.

4. Pursuant to R.I. Gen. Laws § 3-7-21(c), the parties agreed to base the appeal on the record before the Board.

5. Oral closings were held on February 24, 2017.

6. 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. In this *de novo* hearing, a showing was made by Appellant that would warrant reducing the City's ten (10) day suspension to seven (7) days.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the decision of the Board suspending the Appellant's Class BV License for ten (10) days be reduced to seven (7) days and the administrative penalty of \$1,500 reduced to \$1,000. The administrative penalty was not stayed so should have been paid already (so that the Appellant is due a \$500 refund). If it has not been paid, it shall be paid within 30 days of the execution of the decision.

Dated: _____

4/3/17



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:

X ADOPT
 REJECT
 MODIFY

Dated: 4/6/17

Scottye Lindsey
Scottye Lindsey
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 6 day of April, 2017 that a copy of the within Order was sent by email and first class mail, postage prepaid, to the following: Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903 and Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, RI 02904, and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920

Wallace