STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND

Pasha Lounge, Inc. d/b/a Pasha Hookah Bar, Appellant,	
v.	**DBR No.: 15LQ022**
City of Providence, Board of Licenses, Appellee.	

DECISION

I. INTRODUCTION

On or about November 19, 2015, the Providence Board of Licenses ("Board" or "City") denied Pasha Lounge, Inc. d/b/a Pasha Hookah Bar's ("Appellant" or "Pasha") renewal application for its Class BV liquor license ("License"). Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed the Board's decision to the Director of the Department of Business Regulation ("Department"). By order dated November 23, 2015, the Department conditionally stayed the denial of the renewal. A hearing was held on February 19, 2016. The parties were represented by counsel and rested on the record.[1]

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 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.*

[1] The transcript was received on March 10, 2016.

III. ISSUES

Whether to uphold or overturn the Board's decision to deny the Appellant's renewal application for the License.

IV. MATERIAL FACTS AND TESTIMONY

Abraham Henderson ("Henderson") testified on behalf of the City. He testified that he is a resident of Washington Park and is the Chair of the Washington Park Community Association and lives behind the Appellant within 200 feet. He testified that letters were sent to the Board from nearby residents objecting to the renewal. He testified that initially the Appellant's owners contacted them when they opened their establishment and the neighbors did not realize it would be a nightclub. He testified that initially the establishment had a wine and beer license, and it was when it received its full liquor license that issues arose. He testified that within a year and a half there were two (2) shootings outside Pasha; though, not connected to Pasha. He testified that between 2014 and 2015, there were 28 complaints about Brass Monkey, 14 about What Cheer and 45 about Pasha. He testified that recently the Appellant has been making a better effort in trying to curb issues, but there are still issues with public urination and noise. He testified that one of the owners recently came to the community meeting and cleaned its sallyport when asked. He testified that he feels the Appellant is making a better effort, and the neighborhood does not want the Appellant to close, but would like to it to be part of the community and he believed it would be better if the Appellant reverted back to a limited liquor license and closed earlier. He testified that when people exit at midnight or 1:00 a.m., the noise wakes the residents. On cross-examination, he testified that the Brass Monkey is a block away and closes at 2:00 a.m.

Linda Perri testified on behalf of the City. She testified that she lives one and a half blocks from Pasha and has lived there for 32 years and is Co-Chair of the Washington Park Association.

She testified that the Appellant is right next to a residential area in that it is a C-1 zoning but next to R-2 zoning. She testified that there was a change in the neighborhood after the Appellant opened. She testified that at first it was just a hookah bar, but then there were police calls and random gunshots. She testified that while there was a homicide that was not directly related to the bar, there were issues. She testified that the Appellant has discontinued its entertainment. She testified that the owners recently came to the neighborhood meeting, and she thinks that the owners are trying. She testified that recently there have not been the assaults, vandalism, noise, parking issues, complaints and are more like a regular bar, but she would like it to stay that way. She testified that the Appellant is bearable now and she would like to ensure it stays that way with a limited liquor license and by closing earlier.

Everett Brooks, Director of Community and Government Relations at Johnson & Wales University, testified on behalf of the City. He testified that the Board denied the Appellant's initial application but on appeal, the Department gave it a limited license, but several months later the Board gave it a full liquor license.[2] He testified that after it became a full license, it went downhill and many neighbors complained and students were afraid to walk by, and he advised the students to avoid the area. He testified that he agreed that the Appellant has improved, but he thinks it would be better for it to have a limited liquor license and an earlier closing time and review by the Board. He testified that his knowledge is based on conversations with the neighbors and also his work in the community.

On recall, Henderson testified that he works as a dean at a Providence high school and with high risk offenders, so he knows gang members personally and they have been at the Appellant. He testified that after the shootings, he believes that the Appellant obtained security and had been

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[2] The Appellant received a limited liquor license in 2013 and the parties agreed it was six (6) or seven (7) months later that it obtained a full liquor license.

doing better since May, 2015. He testified that the neighborhood association had a petition against the Appellant because the Appellant had twice as many calls as the other two (2) licensed entities.

The Appellant submitted the City's call logs for Pasha, Brass Monkey, What Cheer, Gold Stone Chinese, and Steak Out Pizza. The call log for 2015 showed 22 calls for 840 Allens Avenue which could be Pasha, a catering place, or Gold Stone Chinese as they are at that address. Also admitted was a police report of a larceny at the Brass Monkey in December, 2015 that was not included on the call sheet. See Appellant's Exhibit One (1).

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, 1134 (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); and *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964) (Department's jurisdiction is *de novo* and the Department

independently exercises the licensing function). A new hearing was held for this appeal. The outcome of an appeal is a decision whether to uphold, overturn, or modify a licensing board's decision. Thus, this appeal is not bound by the Board's reasons for denial of renewal but whether the Board presented its case before the undersigned. The undersigned will make her findings on the basis of the evidence before her and determine whether that evidence justifies said denial.

C. Standard of Review

Pursuant to R.I. Gen. Laws § 3-7-6, the Appellant's Class B application for renewal of license may be denied "for cause." Said statute provides as follows:

> Renewal of Class A, Class B, Class C, Class D, Class E, and Class J licenses. The holder of a Class A, Class B, Class C, Class D, Class E, or Class J license who applies before October 1 in any licensing period for a license of the same class for the next succeeding licensing period is prima facie entitled to renewal to the extent that the license is issuable under § 3-5-16. This application may be rejected for cause, subject to appeal as provided in § 3-7-21.

In *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61, 63 (R.I. 1971), the Rhode Island Supreme Court rejected the argument that a license renewal may only be based on breaches of R.I. Gen. Laws § 3-5-21[3] or R.I. Gen. Laws § 3-5-23[4] but instead found "that a cause, to justify action,

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[3] R.I. Gen. Laws § 3-5-21 states 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.
>
> (b) Any fine imposed pursuant to this section shall not exceed five hundred dollars ($500) for the first offense and shall not exceed one thousand dollars ($1,000) for each subsequent offense. For the purposes of this section, any offense committed by a licensee three (3) years after a previous offense shall be considered a first offense.
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> (c) In the event that a licensee is required to hire a police detail and the police refuse to place a detail at the location because a licensee has failed to pay outstanding police detail bills or to reach a payment plan agreement with the police department, the license board may prohibit the licensee from opening its place of business until such time as the police detail bills are paid or a payment plan agreement is reached.

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

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> (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

must be legally sufficient, that is to say, it must be bottomed upon substantial grounds and be established by legally competent evidence." See also *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269 (R.I. 1984); *Edge-January, Inc. v. Pastore*, 430 A.2d 1063 (R.I. 1981). In *Chernov*, renewal was denied because the licensee's president had supporned perjury of two (2) minors that had been served by the licensee. In *Edge-January*, the renewal was denied as it was found that the neighbors' testimony had shown a series of disorderly disturbances happening in front of the licensee's premises that had their origins inside.

In discussing the type of evidence required to be proved for a denial, the Rhode Island Supreme Court found in *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269, 275 (R.I. 1984) as follows:

> We have said at least twice recently that there need not be a direct causational link between incidents occurring outside or nearby a drinking establishment and its patrons. Such a link is established when it can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within. *The Edge-January . . . Manuel J. Furtado, Inc. v. Sarkas*, 373 A.2d 169, 172 (R.I. 1977).

While this is a denial of renewal matter, it is similar to a revocation case in that there needs to be finding of cause. In revoking a liquor license based on disorderly conduct, 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, 295-296 (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

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.

> 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.

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.

D. Arguments

The Appellant argued that there have been no reports of public urination or noise linked to the Appellant and no show cause hearing held by the Board for it except the shooting which was dismissed.[5] It argued that the Appellant no longer has entertainment and never had a disc jockey but plays pre-selected songs on ipods.[6] The Appellant argued that it has a 1:00 a.m. closing and is not a club, but rather is a smoking bar. The Appellant argued that since the November, 2015 denial of renewal of License, there have been no violations. It argued that there are other nearby late night liquor licensees that could be responsible for problems. It argued that the License should be renewed without conditions since there was no evidence that any conditions are needed. The Appellant argued that it has not done anything differently to have changed.

The City argued that many residents signed petitions about not renewing the License and those residents live within two (2) or three (3) blocks of the Appellant. The Board also received

[5] The Appellant's licensing history shows that the Appellant was fined in 2014 for unlicensed entertainment and fined in 2013 for underage drinking. See City's Exhibit 1A, renamed from City's Exhibit 1. Copies of resident letters were also marked as City's Exhibit One (1) so those will remain as City's Exhibit One (1). The Appellant has no disorderly conduct violations.

[6] There was no evidence introduced about the music played on ipods but the issue was raised at the stay hearing and was not disputed by the City.

many letters (from some of the same people who apparently signed the petition).[7] The letters expressed concern about such problems as trash, noise, violence, and entertainment attributed to the Appellant. The City argued that at the Board hearing, five (5) residents testified regarding their concerns with the renewal of the License and that before the Appellant opened such problems did not occur, and these problems began with the opening of the Appellant. At the Department hearing, the testimony was that after the Appellant opened, there were problems but lately the Appellant has been a better neighbor; however, the residents want to ensure it stays that way. The City argued that problems could be pinpointed as being caused by the Appellant,[8] but if the Department chooses to renew the License, conditions should be imposed. The City argued that the Appellant has made changes since it opened such as it no longer advertising for entertainment for which it is not licensed and no longer has such entertainment.

E. Whether the Appellant's Application to Renew License should be Granted

In *AJC Enterprises*, the Court found that the neighbors who all lived in the area "testified at length concerning the increase in noise, parking congestion, litter, public urination, patrons either screaming, intoxicated, or pugnacious, as well as an increase in various other activities, all of which disrupted the neighborhood's established way of life." *Id.* at 274. Further, the Court found as follows:

> In this case several witnesses testified that they watched people urinate on private property after leaving Back Street and that when the establishment closed at night there was a great deal of noise because people were yelling, screaming, slamming car doors, and revving engines. These occurrences did not take place before Back Street opened. We feel it is reasonable to infer from the evidence that the undesirable activities that occurred outside and around Back Street had their origin within. Consequently, we shall not disturb the conclusions and the actions of the trial justice. *Id.* at 275.

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[7] Residents sent letters in which they described where they lived. It is unclear how the petition was gathered and who gathered it.

[8] E.g. after it opened there was public urination, Johnson & Wales' advisory, noise, etc.

At the Department hearing, the witnesses testified the Appellant is no longer offering entertainment and they believe the Appellant is making a better effort to be and has recently been a better neighbor. While Henderson testified as to continuing public urination, there was only that evidence of an ongoing problem[9] and evidence of noise (which is not necessarily only due to the Appellant). The letters sent by residents to the Board spoke of various issues such as noise, traffic, fights, urination, music, and fights as well as a belly dancer from 2013 and a 2:00 a.m. closing which the Appellant does not have. There were 22 calls to the City in 2015 about 840 Allens Avenue.[10]

At the Department hearing, the testimony from Henderson and Perri was that after Appellant opened, there had been continual nuisance issues, but the Appellant is now doing better and is not having any vandalism and assaults. The Appellant is no longer having entertainment for which it is not licensed. A conditional stay was ordered in November, 2015. Thus, the Appellant is doing something different than it had been.

It is dubious that the Board had grounds to deny the renewal of the License in November, 2015. It is more likely the Board could have imposed conditions and/or ordered a review. Based on the testimony at the Department hearing, there are no grounds to impose a limited license or to deny the renewal of the License. However, considering the testimony regarding the changes to the neighborhood after the Appellant opened, but that it is now doing "better," the Department will maintain the conditions and order the Board to review after 90 days for continuing compliance.

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[9] It should be noted such testimony was very general without specifics regarding patrons that he specifically saw exit and urinate.

[10] See Appellant's Exhibit One (1). City's Exhibit Two (2) showed 21 calls in 2015 from 840 Allens Avenue, but that report was run prior to the end of 2015. There were 17 calls in 2014. *Id.* Presumably those 17 and 21 calls are what is referenced as the 45 calls about Pasha. Reviewing Henderson's testimony, it appears that number is for both years (though the correct number based on the call logs would be 39 (22 and 17)).

VI. FINDINGS OF FACT

1. On or about November 19, 2015, the Board denied the Appellant's renewal application for License.

2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed that decision by the Board to the Director of the Department.

3. By order dated November 23, 2015, the Department conditionally stayed the Board's denial of renewal of License.

4. A *de novo* hearing was held on February 19, 2016 before the undersigned sitting as a designee of the Director. The parties rested on the record.

5. 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. § 3-7-21 *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 the Appellant to overturn the denial of renewal.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the decision of the Board denying the Appellant's License renewal be overturned, but the following conditions are imposed until a 90 day review of the Board.

1. No entertainment without a license;

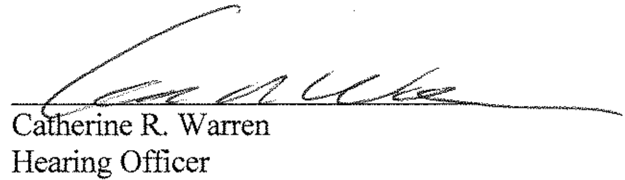
2. No live disc jockeys;

3. Only ambient music be played so that the Appellant's music does not go over 50 dB;[11]

4. No one can exit the premises with bottles or cups; and

5. The Appellant will properly maintain its trash containers so that trash cannot blow out of the trash containers.

Dated: 3/23/16



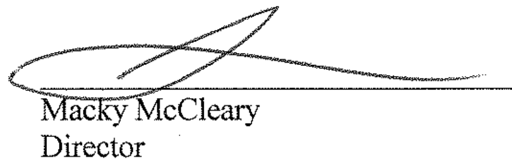
Catherine R. Warren
Hearing Officer

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 See Attached
________ REJECT
________ MODIFY

Dated: 4/1/16



Macky McCleary
Director

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[11] The undersigned based this condition on Article III of Providence Ordinance Code Section 16-93 which states as follows:

> Radios, television sets, and similar devices.
>
> It shall be unlawful for any person within any residential zone of the city to use or operate any radio receiving set, musical instrument, phonograph, television set, or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of neighborhood residents or of any reasonable person of normal sensitivity residing in the area. The operation of any such set, instrument, phonograph, machine or device so as to exceed fifty (50) dBA between the hours of 8:00 p.m. and 7:00 a.m. or so as to exceed fifty-five (55) dBA between the hours of 7:00 a.m. and 8:00 p.m. measured at the property line of the building, structure or vehicle in which it is located, or at any hour when the same is audible to a person of reasonably sensitive hearing at a distance of two hundred (200) feet from its source, shall be prima facie evidence of a violation of this section.

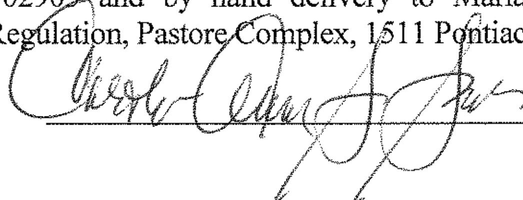
While Allens Avenue is a mixed area and not completely residential, this provides a baseline for ensuring the music stays ambient. See *La Base Sports Bar & Grill LLC v. City of Providence, Board of Licenses*, DBR No.: 10-L-0037 (4/5/11).

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 4th day of ~~March~~ April, 2016 that a copy of the within Decision was sent by first class mail, postage prepaid to Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904 and Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903 and by hand delivery to Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920.



DIRECTOR'S SUPPLEMENTAL STATEMENT TO ADOPTED DECISION

While we recognize that Appellant has been a better neighbor of late, the Department's imposition of conditions and order of a 90 day review should serve as an admonition to Appellant of the Board's ability to seek revocation should there be any regression.