

**STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND**

Vibe Lounge and Hookah Bar, Inc.,	:	
Appellant,	:	
	:	
v.	:	DBR No.: 21LQ004
	:	
City of Pawtucket, Board of Licenses,	:	
Appellee.	:	

DIRECTOR'S DECISION AND ORDER

The Director modifies the Hearing Officer's recommendation and issues this decision and order with respect to the appeal filed by Vibe Lounge and Hookah Bar, Inc. ("Appellant").

Sections I – VII and the first and third paragraphs of Section VIII of the Hearing Officer's recommended decision attached hereto are hereby incorporated herein by reference. Considering the violations, the second paragraph of Section VIII of the recommended decision is modified and replaced with the following:

"The Appellant voluntarily closed on April 24, 2021 pending its hearing before the Board. Its License was revoked on May 11, 2021. The first stay was issued on May 19, 2021. The parties represented that the Appellant reopened on May 30, 2021 (see second stay order of June 22, 2021). Thus, the Appellant was closed for approximately 36 days. As the Appellant was closed for over ten (10) days, the Appellant has already served its suspension of the License. The Appellant shall pay the administrative penalties of \$5,500 by the 31st day after this decision is issued."



Dated: September 20, 2021

Elizabeth Dwyer, Esq., as Designee for
Director Elizabeth M. Tanner, Esq.

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 APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 21st day of September, 2021, that a copy of the within Decision was sent by first class mail, postage prepaid, and by electronic delivery to the following: Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, RI 02904 peter330350@gmail.com, and Frank Milos, Esquire, City Solicitor, 137 Roosevelt Avenue, Pawtucket, RI 02860, fmilos@pawtucketri.com, and by electronic-delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920 pamela.toro@dbr.ri.gov.

Diane L. Paravisini

**STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND**

**Vibe Lounge and Hookah Bar, Inc.,
Appellant,**

DBR No. 21LQ004

v.

**City of Pawtucket, Board of Licenses,
Appellee.**

DECISION

I. INTRODUCTION

Pursuant to R.I. Gen. Laws § 3-7-21, Vibe Lounge and Hookah Bar, Inc. (“Appellant”) filed an appeal with the Department of Business Regulation (“Department”) of the City of Pawtucket, Board of Licenses’ (“City” or “Board”) decision taken on May 11, 2021 to revoke its Class BV liquor license (“License”). The Appellant requested a stay which was conditionally granted by order of the Department dated May 19, 2021 with a second conditional stay order issued on June 22, 2021. A hearing was held on July 13, 2021 with the parties represented by counsel. The Appellant orally rested on the record and the City filed a brief by August 6, 2021.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to 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.*

III. ISSUE

Whether to uphold or overturn the Board’s decision to revoke the Appellant’s License.

IV. MATERIAL FACTS AND TESTIMONY

In terms of the allegations for April 5, 2021, the Respondent agreed to the facts in the police report but denied they constituted disorderly conduct. Said police report indicated that at 1:20 a.m. about four (4) or five (5) men were arguing outside the Appellant's exit and then continued arguing and walking toward the parking lot. A little while later a staff member from the Appellant with "security" written on his shirt approached the group to try to break them up and move them to their cars and one of the men punched the security staff member. The man who punched the security staff member was arrested for disorderly conduct. Joint Exhibit One (1) (police report).

In terms of the allegations for April 11, 2021, the Respondent admitted to an after hours violation. That police report indicated that patrons were still at the Appellant's at 2:00 a.m. socializing and drinking. Joint Exhibit Two (2) (police report). In terms of the allegations for April 18, 2021, the Respondent admitted to an after hours violation but not to the disorderly conduct allegations. Joint Exhibit Three (3) (police report). The police report indicated that there were about 20 employees still on the premises at 1:35 a.m.

Sergeant David Medeiros ("Medeiros"), Pawtucket Police Department ("PPD"), testified on behalf of the City. He testified that on April 11, 2021 at about 1:15 a.m., he was on duty near the Appellant ensuring patrons left and got into their vehicles. He testified he observed a car on the Union Street side of the club and its driver was spinning the car's tires to make a smokescreen and people were egging him on and yelling. He testified that he spoke to the driver that it could be dangerous if the car slipped, and the driver told him he had come from the Appellant. On cross-examination, he testified that his report stated that the driver told him that they had just left the club and were trying to impress some women.

Medeiros further testified that on April 18, 2021,¹ at about 1:15 a.m., he responded to a radio call that additional cars were needed at the Appellant. He testified there were approximately 150 to 200 people outside yelling and taunting the police officers there. He testified that the two (2) other Class B establishments in the area were closed which he knew from personal observation. He testified that people outside were blocking the streets and vehicles could not go down the side streets and about 10 to 12 officers were called to the scene and it took about 20 to 30 minutes to clear the area. He testified that no staff from the Appellant helped them to clear the street. On cross-examination, he testified that he was not aware of what time one of the other Class B licensees advertised that it closed, but he did not see anyone coming from that licensee's direction.

Medeiros testified that on April 23, 2021 at about 12:50 a.m., he received a call for shots fired inside the Appellant's. He testified there are two (2) entrances to the Appellant, and he drove to the Broad Street side where he saw Officer Kinney telling the security guard that she needed to get inside since there had been a 911 call for shots fired. He testified he overheard the security guard saying no shots were fired and they were just part of the song that was playing. He testified that the security guard was physically blocking Officer Kinney from going in and she did not try to push through him. He testified he told the security guard about the nature of the call and that they were going inside to make sure there were no victims and the guard moved aside and they went in. He testified the music inside was loud, but he did not hear anything that sounded like gunshots and there was a large crowd of approximately 200 people. He testified that they overheard on the radio that other officers had located a victim on the Union Street side which is on the opposite side of the building. He testified he went outside to the victim's location, and there were several officers trying to render aid to the victim who was lying on the ground in front of the North

¹ The transcript states May 18, 2021 but the parties' stipulation and evidence is that this is for April 18, 2021.

Union side. He testified there were approximately over 200 people running out the back and side doors and the parking lot next to the Appellant. He testified the crowd was taunting the officers while police officers were rendering assistance, and they did not know where the shooter was. He testified they screamed at people to leave and nobody listened and it took approximately three (3) to five (5) minutes to clear the crowd.

On cross-examination, Medeiros testified that he did not watch the videos of the incident. He testified that he did not see any of the Appellant's security outside. He testified there was a police car blocking one portion of the street. He testified that he did observe some water and paper towels on the ground but he did not know who had gotten them. He testified there were 200 people in the club and those were the same people who come outside.

Officer Sloan Kinney, PPD, testified on behalf of the Board. She testified that on April 23, 2021, she was dispatched to the Appellant in response to a shots fired call. She testified she went to the Broad Street entrance, and there was a security guard outside, and she told him about the call and that she needed to get inside to make sure nobody was injured, and he said that no shots were fired, and it was just the song. She testified the door was open and she could hear loud music and it did not sound like shots firing. She testified the security guard did not move, and she told him a few times that she needed to get inside and then Officers Medeiros and Patrie arrived, and they told the guard they were going inside and pushed their way through. She testified that there were many people inside and they asked them if they had heard shots and they had not but then a woman called out that somebody was on the ground outside so they went out the back door. She testified the victim was on the sidewalk across the street, and an officer was trying to help him. She testified there were about ten (10) to 15 people standing around the victim and the officers. She testified that people were screaming that the officers were not doing anything. She testified

that they told people to back up so rescue could come, and they wanted to secure the scene. She testified that there were at least a few hundred people there; though, not in the immediate vicinity of the victim. She testified that it probably took about 10 minutes to disperse the crowd.

On cross-examination, Kinney testified that she approached the bouncer at the club and then two (2) other officers approached and they were able to gain entry. She testified that when they got into the club, nobody inside was in a panic or nervous. She testified that when she exited the club, there were about 100 people in the street near the door. She testified that she did not watch the videos associated with this incident. She testified that there were more than 20 people outside the club while they were trying to get to the victim. She testified that she did not see any security from the Appellant helping the officers disperse the crowd.

Officer Tyler Mobrince, PPD, testified on behalf of the Board. He testified he was on duty on April 23, 2021 and was dispatched to the Appellant for a shots fired call. He testified that when he arrived, he saw the victim lying on the ground, and there were not any police with the victim so he began to render aid. He testified that someone provided towels, but he did not know who. He testified other officers arrived on the scene, and there were about ten (10) to 15 people in the vicinity shouting obscenities. He testified there were about 100 people generally in the area exiting from the Appellant. He testified that people did not respond to the directives to move, and it could have taken 15 minutes to disperse the crowd so that rescue could get through. On cross-examination, he testified that he parked his cruiser at the top of the street, and someone but he did not know who told him that the victim was at the end of the street. He testified he thinks the Appellant's security tried to help control the crowd.

Officer Chris Borelli, PPD, testified on behalf of the Board. He testified that on April 23, 2021, he was dispatched to the Appellant due to a shots fired call. He testified that when he arrived,

there was a large crowd outside and there was a man on the ground with two (2) officers rendering aid and there was an unruly crowd around them. He testified the crowd was at least 100 to 150 people with about 20 people near the back. On cross-examination, he testified that he did not see any of the Appellant's staff members attempting to help the police disperse the crowd. He testified that at first, there were about five (5) to ten (10) people and then about 20 people near the victim.

Detective Andrew Torres, PPD, testified on behalf of the Board. He that he was on call on the night of April 23, 2021 and is the detective for this case and came into possession of videotapes from the Appellant and businesses in the area. He testified prior to speaking with the victim, he was able to watch some of the videos. He testified that the victim was the hospital and he spoke to two (2) individuals there that he recognized from the videotapes and explained to them he was investigating the shooting. He testified that they both were with the victim at the time of the shooting and told him they did not know who the shooter was but at one point when they were inside the club, they saw the suspect and he appeared to act "macho" and they thought he might be under the influence of narcotics. He testified that they said the shooter said something to them in passing but the music was so loud that they did hear what had been said. He testified that this exchange cannot be seen on the video. He testified that the victim's friends indicated that they were approached by the shooter. There was no cross-examination.

Victor Silva ("Silva") testified on behalf of the Appellant. He testified that he owns the Appellant and was there on April 23, 2021. He testified that night, he was by the back bar and a bartender came to him and told him there was a verbal confrontation at a table, and he went over and saw a man was going back and forth with a couple of other men at the table. He testified he tried to talk to the man, but the man kept going on and he asked the men at the table what was going on and they said they did not know the man, but he was bothering them and wanted him to

go away. He testified he told the other man he had to leave and escorted him out and watched him leave the building at about 11:00 p.m., and he was not allowed back in. He testified that he has seen the videos and he and the PPD agree that the man he escorted out was the shooter. He testified that his wife called 911 after the shooting. He testified that night he was wearing a red Coca-Cola shirt. He testified that he went outside and saw the victim lying on the ground and then shortly after, a patrol car blocked the roadway. He testified that he ran to the vehicle and told the officer that the victim was lying on the ground. He testified the Appellant's security staff helped the police disperse the crowd, and he was out there the whole time, and he was trying to make sure the victim got help. On questioning from the undersigned, he testified that the police car is in the intersection at the top of the video and the victim is in the street at the bottom of the street. On cross-examination, he testified that he saw the actual shooting incident on video and the shooter is the man he threw out. He testified that the bartender overheard what was going on at the table and told him. He testified that the people the shooter had spoken to were with the victim in the video.

A review of what was referred to by the parties as the "second" video showed at 50 minutes, patrons exiting the club. At 50:10 minutes, there were approximately ten (10) to 12 people outside. The shooter appeared on the lower left side of the video at about 50:11 and fired his first shot at 50:12. He fired again at approximately 50:22 and 50:26. Between 50:39 and 50:57, two (2) people tentatively came from the club and then walked down the street toward the area. At 51:03, a security staff member came out and then was on his cell phone. At 51:30 another security staff member came outside. At 52:52, the owner came out. At 53:48 and at 54:50, someone came from the club with what looked like a towel and went down the street. At about 53:13, there were about 12 people outside with some near the victim. Joint Exhibit Five (5) (videos from April 23, 2021).²

² The videos admitted as Joint Exhibit Five (5) are subject to a protective order and were admitted under seal.

At 54.02, the owner started walking up the street and at 54.30, he was at the top of the street. At 54.36, a police car appeared at the top of street. At 54.46, it appeared that the owner was next to the police car and at 54.52, a police officer (from the car) was running down the street toward the victim. At 55.38, two (2) more officers arrived on the street. At 55.42, a police officer was in the street waving people back from approaching the victim, and a club security staff member was also waving people back. At 56.00, more police arrived. There were a few people milling about. At 57.20 and 58.40, a police officer was speaking to a security staff member and the owner also was present in the street. At 57.53, the EMT's walked through the parking lot to access the victim. At 59.05, there were police in the street next to the security officer.³

The "third" video showed the same sequence from the top of the street. At 50.09, the shooter appeared and fired his first shot at 50.12 and again at 50.22 and 50.26. At 51.06, the security officer came out. At 53.47, someone came out of the club with a towel and at 54.10, the owner started walking up the street. At 54.54, a police officer ran down the street [his car cannot be seen in this video]. At 55.20 and 55.33, more police officers arrived. At 57.50, EMT's walked through the parking lot and a bystander pointed them to the victim down the street. At 58.56, a police officer talked to a bystander at the top of the street who looked like he asked a question. At 59.23, there were about ten (10) people on the sidewalk. At 59.34, a police car drove down the street from the top of video. At 59.45, there were about ten (10) people on the street near the victim, about eight (8) people near the club's exit, and about five (5) to seven (7) people near and in the parking lot next to the club. Neither video showed more than 20 or 30 people at one time on the street or near the victim or club.

³ The undersigned has adjusted some of the times from the video compared to the times mentioned in the second stay order based on re-watching said video.

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. **Arguments**

The Appellant argued that for April 11, 2021, there is no link between the Appellant and the driver trying to impress a woman. The Appellant argued that for April 18, 2021, two (2) other clubs in the area open to 1:00 a.m. The Appellant argued there was no nexus between the shooting and the Appellant, and the video is clear that within a minute after the shooting, there were bouncers outside, no one was blocking the police, and security were trying to disperse the crowd.

The City argued that the Board was concerned with four (4) incidences within 18 days as well as the Appellant’s violations of the COVID19 Department of Health’s SAFE regulations. The City argued that the various violations on four (4) different days justified revocation and on April 23, 2021, the shooter had been inside the club and spoke to the victim and his friends and then shot the victim outside so there was a link between the Appellant and the shooting.

C. The Appeal before the Department

After the end of prohibition of liquor within the United States, Rhode Island implemented a new system of statewide control of liquor coupled with local authority to grant certain licenses. See P.L. 1933 ch. 2013. The intent of the new system was to eliminate the old unsupervised system of local regulation that resulted in a lack of uniformity and grave abuses that seriously affected the public welfare and instead vested broad powers of control and supervision in a state system. *Baginski v. Alcoholic Beverage Commission*, 4 A.2d 265 (R.I. 1939).

In keeping with the Department's statewide oversight and mandate to "establish a uniformity of administration of the law for purpose of promoting temperance throughout the state," the Department has broad statutory authority to review liquor appeals. *Baginski*, at 268. See also *Tedford et al. v. Reynolds*, 141 A.2d 264 (R.I. 1958). *Baginski* held that since the Department⁴ is a "superlicensing board," it has the discretion to hear cases "*de novo* either in whole or in part." *Baginski*, at 268. Thus, an appeal may hear new testimony in part and/or may rely on the hearing before the local licensing authority. However, as the review is *de novo* the parties start afresh during the appeal but the Department has the discretion to review the local authority partially *de novo* and partially appellate as seen fit. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Since the Department is charged with ensuring statewide uniformity, it follows that the statutory scheme grants the Department the authority to revise or alter decisions of local boards. *Id.* Further, since the liquor appeal hearing is a *de novo* hearing rather than an appellate review of what occurred at the municipal level, any alleged error of law or fact committed by the municipal agency is of no consequence. *Id.* See also *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964) (Department's jurisdiction is *de novo* and the Department independently exercises the licensing function).

⁴ At that time the alcoholic beverage commission.

In this matter, the decision is being made on the record below and the testimony at hearing before the Department. The outcome of an appeal is a decision whether to uphold, overturn, or modify a licensing board's decision. Thus, this appeal is not bound by the Board's reasons for revocation but whether the Board presented its case for revocation or 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 revocation and the penalty.

As the Department has statewide authority and indeed the statutory intent is to ensure statewide consistency, 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). Thus, the unevenness in the application of a sanction does not make it unwarranted in law. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.). See also *Stage Bands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.). However, a sanction must be proportional to the violation and if there is an excessive variance in a sanction than it will be found to be arbitrary and capricious. *Jake and Ella's* 2002 WL 977812 (R.I. Super.). In reviewing local authorities' decisions, the Department ensures that local authorities' sanctions are not arbitrary and

capricious and that statewide such sanctions are consistent and appropriate (otherwise sanctions would be arbitrary).

Nonetheless, the revocation of a liquor license is a relatively rare event and is reserved for a severe infraction or a series of smaller infractions that rise to a level of jeopardizing public safety. See *Stage Bands* (disturbances and a shooting on one night justified revocation) and *Pakse Market Corp.* (upholding revocation of license when had four (4) incidents of underage sales within three (3) years). See also *Cardio Enterprises, d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (killing of patron with incident starting inside and escalating outside justified revocation).

In order to impose discipline such as a revocation or suspension, cause must be found. R.I. Gen. Laws § 3-7-6 provides that applications for retail liquor licenses may be denied for cause. *Chernov Enterprises, Inc. v. Sarkas*, 109 R.I. 283 (1971) found that cause shall mean, “we have said that a *cause*, to justify action, must be *legally sufficient*, that is to say, it must be bottomed upon substantial grounds and be established by legally competent evidence.” *Id.* at 287 (italics in original).

The Court revisited the issue in *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269 (R.I. 1984). In discussing the cause standard of R.I. Gen. Laws § 3-7-6, the Court found,

In determining whether the statutory standard now under consideration is so vague as to offend due process, we are mindful of the principle that vague legislative standards may be saved if the needed specificity has been supplied by judicial interpretation. (citation omitted) The requisite judicial gloss was supplied in [*Chernov*] wherein the court emphasized that in authorizing revocation for cause, the Legislature never intended either to confer upon a licensing authority a limitless control or to countenance the of an unbridled discretion. The cause, the court noted, that would justify revocation had to be "legally sufficient"; that is, it must be bottomed upon substantial grounds and established by legally competent evidence. *Id.* at 274.

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

D. Sanctions Prior May 11, 2021

In its brief, the City noted that City records show that the Appellant was issued its License on December 29, 2017. It has no sanctions on its License. The Appellant received two (2) COVID violations from the Department of Business Regulation/Department of Health; though, the Appellant's attorney represented that he challenged the validity of the second COVID citation. The undersigned indicated that she would take administrative notice of the COVID19 citations.

E. When Sanctions are Imposed

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:

(1) Breach by the holder of the license of the conditions on which it was issued;

or

(2) Violation by the holder of the license of any rule or regulation applicable;

or

(4) Breach of any provisions of this chapter; or

(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.

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 . . . or permits any of the laws of this state to be violated in the neighborhood, in addition to any punishment or penalties that may be prescribed by statute for that offense, he or she may be summoned before the board, body, or official that 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). See also *A.J.C. Enterprises; Schillers; and Furtado v. Sarkas*, 118 R.I. 218 (1977).

Thus, case law has found that R.I. Gen. Laws § 3-5-23 prohibits a liquor licensee from causing directly or indirectly an annoyance in the neighborhood. In order to violate R.I. Gen. Laws § 3-5-21, a licensee must violate a condition of licensing. In order to find that a licensee violated one of those statutes, there must be a finding that a condition of licensing was violated or the licensee directly or indirectly caused an annoyance in the neighborhood.

F. Whether there were Violations

a. April 23, 2021

i. The Shooting

In less than a minute after the shooting, a club security member was outside and on a cell phone and in less than two (2) minutes, another security staff member was outside and in less than three (3) minutes, the owner was outside. The security staff member and owner spoke to the police. The owner appeared to speak to the first police officer when he arrived. A bouncer was in the street waving people away. The EMT’s arrived within seven (7) minutes after the shooting. There

were people outside near the victim and on the street and sidewalk, but there were not over a 100 people in the vicinity that needed to be dispersed by the police.

In a denial of renewal matter, *A.J.C. Enterprises v. Pastore*, 473 A.2d 269, 275 (R.I. 1984) found in discussing the disorderly provisions that “[T]here need not be a direct causational link between incidents occurring outside or nearby a drinking establishment and its patrons. Such a link is established when it can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within.”

In *Stage Bands*, there were three (3) extreme disturbances in one night including a shooting. In citing to *A.J.C. Enterprises*, the Court in *Stage Bands* upheld the Department’s decision for revocation finding that a reasonable inference could be made that the cause culminated inside that establishment when a disturbance occurred immediately outside a drinking establishment. Similarly, in *Cardio*, the victim and the killer physically argued inside the bar which escalated into a killing either inside or just outside the bar. 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 then there was violence. With the large crowd of people exiting that club as a result of the ejection, it was reasonable to infer that the violence was connected to the crowd that spilled out of that club. In *The Vault Lounge, LLC v. City of Providence, Board of Licenses*, DBR No.: 16LQ008 (9/14/16), a patron was ejected from a club and then did not leave the area and tried to get back inside so that the club was indirectly responsible for the patron’s shooting 18 minutes after the ejection.

In contrast, in *Moe’s Place, Inc. d/b/a D’Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ022 (6/24/14), two (2) men were ejected for being drunk and belligerent. When they were outside, a car drove by and the driver fired a gun in the air. The police did not identify

a victim or suspects. While the two (2) incidents happened close together, there was not enough evidence to make a finding that the shooting arose from the disturbance in the club. 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 inside the bar that spilled outside where it culminated in the fight. 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. See also *El Tiburon Sports, Inc. v. Providence Board of Licenses*, DBR No. 06-L-0087 (6/1/07) (no link between licensee and an assault down the street from licensee).

In this matter, the City argued that pursuant to *Stage Bands*, an inference could be made between what happened inside and the shooting outside. However, there was no evidence of any disturbance starting inside and spilling outside where it culminated in the fight. See also *Cardio*. There was no evidence (whether eyewitness, on video, in a police report, etc.) that there was any disturbance whether oral or physical in the club that night. There was no testimony by patrons or police officers before the City or the Department regarding any disturbance within the club. The evidence was that the shooter had been verbally annoying other patrons and acting “macho” but there was no evidence that the other patrons engaged in an argument with the shooter. Indeed, a bartender observed the shooter and informed Silva who spoke to the other patrons who said the shooter was bothering them and Silva escorted the shooter out. The shooter was thrown out of the club by the club owner an hour and 50 minutes before the shooting.

Unlike *The Vault*, in this matter, the shooter left the area and did not stay in front of the club and/or try to go back inside. He was no longer a patron at the time of the shooting. Indeed, if a patron leaves a Class B liquor licensee on his or her own steam without incident inside and then walks down the street for a coffee and then returns and fights with the bouncers, it would be

hard to make a link that the licensee would be indirectly responsible for that fight and said patron would no longer have been a patron.

Unlike *Stage Bands*, *Cardio*, or *Fatt Squirrel*, it cannot be inferred that in the hour and 50 minutes from the shooter being ejected to the shooter shooting the patron outside the Appellant that the shooting was directly or indirectly caused by some kind of disturbance in club. There was no evidence that directly or indirectly linked the Appellant to the shooting. Therefore, there can be no finding that the Appellant violated R.I. Gen. Laws § 3-5-23.

ii. The Security Staff Member

A licensee has the obligation to conduct its business to comply with the law and is responsible for violations of the law even if it had no knowledge of such violations. *Scialo v. Smith*, 210 A.2d 595 (R.I. 1965). The evidence was that no one inside the Appellant heard the shots fired as the patrons were continuing to socialize when the police went inside, and the patrons told the police that they had not heard anything. However, refusing entry to the police when they have been summoned by a 911 call violates R.I. Gen. Laws § 3-5-21 since it is axiomatic that a condition of licensing would be to allow entry in response to emergency calls. See *The Vault*.

b. April 5, 2021

The police report indicated the police were monitoring the closing of the Appellant. At approximately 1:20 a.m., some men were outside the club's rear entrance arguing and then walked toward the parking lot and continued arguing. An employee of the Appellant with "security" on his shirt tried to move the group along to their vehicles. Instead of moving along, one of the men punched the staff member in his face. It can be inferred that the men exiting the club were arguing inside and continued arguing outside since they were right outside the exit at closing time. Based on the foregoing, there was a violation of R.I. Gen. Laws § 3-5-23.

c. April 11, 2021

The Department's *Liquor Control Administration* Regulation, 230-RICR-30-10-1 ("Liquor Regulation"), provides in part as follows:

1.4.18 Hours of Business - Retail

A. All patrons shall leave the licensed premises not later than 1:20 a.m. where the licensee is permitted to remain open until 1:00 a.m. Last call shall be at 12:45 a.m. Where licensee is permitted by local ordinance or permit to remain open until 2:00 a.m. all patrons must leave the licensed establishment by 2:00 a.m. All employees shall leave the licensed premises within one-half hour after the required closing time; provided the owner or employees may enter or be in a licensed establishment at any time for a legitimate business purpose with approval from the local police department. This paragraph shall not apply to a Class B-C license.

B. The owner or employees may not consume alcoholic beverages on the premises after the legal closing time or before the legal opening time.

The Appellant agreed that on this night there was an after hours violation. The police report also indicated that night, there was a crowd outside surrounding a car whose driver was spinning its wheels causing the crowd to yell and scream. While the driver had been a patron and seems to have been showing off while spinning his wheels, it cannot be inferred that there was an incident inside the Appellant that caused him to spin his wheels. Unlike April 5, 2021, where it can be inferred the arguing patrons started arguing inside and carried on outside with that ending up with a patron punching the security staff member, the only evidence is a patron spun his car wheels. Based on the foregoing, there was no disorderly conduct violation, but the Appellant violated R.I. Gen. Laws § 3-5-21 (condition of license) and § 1.4.18 of the Liquor Regulation (after hours).

d. April 18, 2021

The Appellant admitted to an after hours violation. In terms of the crowd outside, Medeiros testified that he did not see any people coming from the direction of the other two (2) Class BV licensees in the area. The police report indicated that Medeiros personally checked the other two (2) clubs and they were locked and closed at 1:45 a.m. While the Appellant raised the issue that

the other two (2) clubs apparently also close at 1:00 a.m., there was no evidence regarding their closing times, and there was evidence that the patrons were exiting the Appellant. There was evidence that patrons stayed on after hours at the Appellant so were exiting later than allowed. Based on the evidence, it can be inferred that the patrons leaving the Appellant caused a nuisance by screaming, yelling, and failing to disperse. Thus, there was a violation of R.I. Gen. Laws § 3-5-23, R.I. Gen. Laws § 3-5-21, and § 1.4.18 of the Liquor Regulation.

F. The Violations

Based on the foregoing, the Appellant engaged in the following violations:

On April 5, 2021, the Appellant violated R.I. Gen. Laws § 3-5-23 (disorderly conduct).

On April 11, 2021, the Appellant violated R.I. Gen. Laws § 3-5-21 (condition of license) and § 1.4.18 of the Liquor Regulation (after hours).

On April 18, 2021, the Appellant violated R.I. Gen. Laws §3-5-23, R.I. Gen. Laws § 3-5-21, and § 1.4.18 of the Liquor Regulation.

On April 23, 2021, the Appellant violated R.I. Gen. Laws § 3-5-21.

G. What Sanctions are 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.

In terms of progressive discipline, as discussed above the imposition of sanctions is not based on a mechanical grid and must be proportional (e.g. appropriate progressive discipline). Thus, if a licensee received a ten (10) day suspension for disorderly conduct and then violated conditions of

licensing by one (1) after-hour violation, it does not follow that the sanction must be higher than the ten (10) day suspension for the prior disorderly violation, but rather the sanction would be more than if it would be for a first violation.

The Department's statutory mandate and role as a superlicensing authority informs its decisions on ensuring that sanctions are not arbitrary and capricious. In this matter the City revoked the License on the basis of the April 23, 2021 shooting and other violations that occurred within 20 days of the shooting. However, as there was no disorderly conduct on April 23, 2021, there was no type of egregious violation that would necessitate a revocation without progressive discipline. Thus, the Board failed to impose progressive discipline to serve as a corrective. *Pakse and Jake and Ella's*. See also *WGIC d/b/a Beve v. City of Providence, Board of Licenses*, DBR No.: 19LQ008 (5/28/18).

The April 5, 2021 disorderly conduct involved patrons verbally arguing when exiting and when told to move along by security, a patron punched the security staff member. This was the Appellant's first violation and first disorderly violation and the bouncer was doing his job. Pursuant to R.I. Gen. Laws §3-5-21(b), an administrative penalty of \$500 is imposed.

R.I. Gen. Laws §3-5-21(b) provides that the maximum penalty for a second offence within three (3) years is \$1,000. Only six (6) days after the April 5, 2021 violation, the Appellant, on April 11, 2021, violated R.I. Gen. Laws § 3-5-21 by violating § 1.4.18 of the Liquor Regulation. As the second set of violations were so close to the first violation that merits the maximum administrative penalty of \$1,000 each for the two (2) subsequent violations on April 11, 2021.

One (1) week later, the Appellant again violated R.I. Gen. Laws § 3-5-21 by violating § 1.4.18 of the Liquor Regulation. The Appellant also had a disorderly conduct violation. The fact that there were another after hour violation within one (1) of week of an after hour violation as

well as less than two (2) weeks from the disorderly conduct violation merits the maximum administrative penalty of \$1,000 each for the after hour and condition of licensing violations on April 18, 2021 violations as well as a two (2) day suspension of the License. As there was another disorderly conduct violation that constituted a crowd of patrons that would not leave and this was in conjunction with other violations that night and within two (2) weeks of other violations, a suspension of License for three (3) days is given for the disorderly conduct of April 18, 2021.

Five (5) days after April 18, 2021 on April 23, 2021, the Appellant violated the conditions of licensing. The fact that this violation occurred so close to the prior violations merits an administrative penalty of \$1,000 and a five (5) day suspension of its License.⁵

VI. FINDINGS OF FACT

1. On or about May 11, 2021, the City notified the Appellant that its License had been revoked by the City.
2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed the decision to the Director of the Department.
3. By orders dated May 19 and June 22, 2021, the Department conditionally stayed the revocation of the License.
4. The Appellant rested on the record. The City timely filed a brief by August 6, 2021.
5. The facts contained in Section IV and V are reincorporated by reference herein.

⁵ These series of violations do not represent a series of infractions as detailed in *Pakse* that rise to the level of justifying revocation. For example in *Secretos, LLC v. City of Providence, Board of Licenses*, DBR No.: 15LQ010 (8/11/15), there were ten (10) R.I. Gen. Laws § 3-5-21 violations (nonviolent) that occurred after three (3) prior R.I. Gen. Laws § 3-5-21 violations. The new violations merited a 22 day suspension of liquor license and administrative penalties because of the types of violations (included overcapacity). When prior discipline has been more severe, non-disorderly conduct violations merit higher sanctions especially when some occurred during the late night license's suspension for prior violations. See *Ciello, LLC v. City of Providence, Board of Licenses*, DBR No.: 18LQ004 (5/28/18).

The City referenced that the Appellant had been given past warnings. However, there were no official sanctions imposed by the City for which evidence was introduced. While any violations by the Appellant of COVID19 regulations would be concerning, those citations did not affect the liquor license and apparently one (1) citation is being appealed.

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. On April 5, 2021, the Appellant violated R.I. Gen. Laws § 3-5-23 (disorderly conduct).
3. On April 11, 2021, the Appellant violated R.I. Gen. Laws § 3-5-21 (condition of license) and § 1.4.18 of the Liquor Regulation (after hours).
4. On April 18, 2021, the Appellant violated R.I. Gen. Laws § 3-5-23, R.I. Gen. Laws § 3-5-21, and § 1.4.18 of the Liquor Regulation.
5. On April 23, 2021, the Appellant violated R.I. Gen. Laws § 3-5-21.
6. The Appellant did not engage in disorderly conduct on either April 11 or 23, 2021.

VIII. RECOMMENDATION

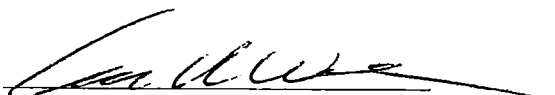
Based on the above analysis, the Hearing Officer recommends that the decision of the City revoking Appellant's Class BV License be overturned and the following sanctions be imposed:

- 1) April 5, 2021: an administrative penalty of \$500 (disorderly conduct).
- 2) April 11, 2021: an administrative penalty of \$2,000 (condition of licensing, after hour).
- 3) April 18, 2021: an administrative penalty of \$2,000 and two (2) day suspension of its License (condition of licensing, after hour) and a three (3) day suspension of License (disorderly conduct).
- 4) April 23, 2021: an administrative penalty of \$1,000 and a five (5) day suspension of its License (condition of licensing).

The Appellant voluntarily closed on April 24, 2021 pending its hearing before the Board. Its License was revoked on May 11, 2021. The first stay was issued on May 19, 2021. The parties represented that the Appellant reopened on May 30, 2021 (see second stay order of June 22, 2021). Thus, the Appellant was closed for approximately 36 days. As the Appellant was closed for over ten (10) days, the Appellant has already served its suspension of License. In light of the Appellant's closure for an extra 26 days that shall be considered to have been served in lieu of the administrative penalties of \$5,500. Thus, the Appellant does not have to pay the administrative penalties.

Furthermore, the condition of the stay for a police detail for every night that the Appellant is open shall be lifted but a police detail will continue for Friday and Saturday nights and any night before a State holiday. The Board shall review the weekend requirement for a police detail within 30 days of the execution of this decision.

Dated: September 9, 2021


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: 9-20-21

Elizabeth Dwyer as designee for 
Elizabeth M. Tanner, Esquire
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 21st day of September, 2021 that a copy of the within Decision was sent by first class mail, postage prepaid and by electronic delivery to the following: Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904, peter330350@gmail.com, and Frank Milos, Esquire, City Solicitor, 137 Roosevelt Avenue, Pawtucket, R.I. 02860, Fmilos@pawtucketri.com, and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Diane L. Paravisini