

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

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<b>Eagle Social Club d/b/a Ava's Wrath</b>	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	<b>DBR No.: 14LQ021</b>
	:	<b>DBR No.: 14LQ026</b>
<b>The City of Providence Board of Licenses,</b>	:	<b>consolidated</b>
<b>Appellee.</b>	:	

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**DECISION**

**I. INTRODUCTION**

On or about May 1, 2014, the Providence Board of Licenses (“Providence” or “Board” or “City”) notified the Eagle Social Club d/b/a Ava’s Wrath (“Appellant”) that its Class D liquor license (“License”) located at 383 Admiral Street, Providence, Rhode Island had been suspended for eight (8) days by the Board and a \$7,000 administrative penalty imposed. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision to the Director of the Department of Business Regulation (“Department”). By order dated May 8, 2014, the Department stayed the eight (8) day License suspension but not the administrative penalty. On or about May 13, 2014, the Board notified the Appellant that its License had been revoked and a \$7,000 administrative penalty imposed.<sup>1</sup> Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision to the Department. By order dated June 4,

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<sup>1</sup> Both orders referred to all licenses owned by the Appellant. However, the appeal to the Department only relates to the liquor license held by the Appellant. See *El Nido v. Goldstein*, 626 A.2d 239 (R.I. 1993) (victualing license is a separate and distinct license from a liquor license). The Appellant has other avenues of appeal for its other licenses. The Rhode Island Supreme Court has held that when a town council acts in a quasi-judicial manner and does not provide for a right of appeal, the proper avenue for appeal is *writ of certiorari* to the Rhode Island Supreme Court. *Cullen v. Town Council of Town of Lincoln*, 893 A.2d 239 (R.I. 2000); *Eastern Scrap Services, Inc. v. Harty*, 341 A.2d 718 (R.I. 1975).

2014, the Department granted the Appellant's motion to stay the revocation of License provided the Appellant remained closed pending the appeal and decision being issued and denied the Appellant's motion to stay the administrative penalty and vacated the order issued on May 8, 2014.

Pursuant to Section 23(c) of *Central Management Regulation 2 Rules of Procedure for Administrative Hearings*, these two (2) appeals were consolidated. Pursuant to R.I. Gen. Laws § 3-7-21(c),<sup>2</sup> the parties agreed to base part of the appeal on the record before the Board as well as to provide additional testimony relating to the revocation decision. In addition, at hearing on June 4, 2014, the City added a new allegation dating from after the incidents relied on in the Board's suspension decision and revocation decision.<sup>3</sup> Written closings were timely filed by August 7, 2014.

## II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

## III. ISSUES

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

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<sup>2</sup> R.I. Gen. Laws § 3-7-21 states in part as follows:  
Appeals from the local boards to director.  
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(c) The director may accept into evidence a stenographic transcript of a witness's sworn testimony presented before the local board that was subject to cross examination. This testimony may be rebutted by competent testimony presented at the hearing held by the director.

<sup>3</sup> The Department may hear direct testimony on allegations against a licensee whose license has already been revoked by the licensing authority and when such revocation is already on appeal. *Bourbon Street, Inc. d/b/a Senor Froggs/Sully's Sports Bar v. Newport Board of License Commissioners*, LCA-NE-98-19 (6/1/99) upheld by *Bourbon Street, Inc. d/b/a Senor Froggs/Sully's Sports Bar v. Newport Board of License Commissioners*, 1999 WL 1335011 (R.I. Super.).

#### IV. MATERIAL FACTS AND TESTIMONY

At the Department hearing, the City presented evidence on a new allegation against the Respondent. Detective John St. Lawrence (“St. Lawrence”), Providence Police Department (“PPD”), testified on behalf of the Board. He testified that he is in charge of the Licensing Enforcement Unit. He testified that on May 9, 2014 he responded along with Sergeant Tejada (“Tejada”) to the Appellant’s for a compliance check. He testified that he observed a bouncer checking identifications (“ID”) with an ID scanner and the Appellant’s owner, Roberta Ricci (“Ricci”), using a minor book with people signing it. He testified that he entered the Appellant’s and saw a person (“McCarthy”) put his beer on the floor so he asked him how old he was and obtained McCarthy’s real ID showing that he is 19 years old but also obtained his fake Connecticut driver’s license indicating he was of legal age to drink. St. Lawrence testified that the fake Connecticut driver’s license felt wrong and its laminate was cheap so that if one bent the license, the laminate crinkles which indicates a problem. He testified that he used the Appellant’s UV light at the entrance of the bar to check this license and it was missing Connecticut security features. See City’s Exhibit One (1) (the seized Connecticut fake license). He testified that he took a sample from McCarthy’s drink and submitted it for analysis to the State lab along with a specimen seized by Tejada from another individual (“Fitzpatrick”). See City’s Exhibits Two (2) and Four (4) (testing request and results showing both samples to be alcohol).

On cross-examination, St. Lawrence testified that the Appellant’s minor book references R.I. Gen. Laws § 3-8-6 regarding the use of a minor book.

Sergeant David Tejada testified on behalf of the Board. He testified he is a supervisor for the Licensing Enforcement Unit. He testified that on May 9, 2014, he went into the Appellant's with St. Lawrence and tapped Fitzgerald on the shoulder and he put his drink down. He testified that he spoke to Fitzgerald and obtained his real ID showing he is 19 years old and obtained his fake Illinois driver's license indicating that he is legal to drink. He testified that the Illinois ID felt wrong in that when one bent the license, the laminate crinkled and the laminate stopped just short of the edge of the ID. He testified that he used an UV light on the license and it did not have Illinois security features. See City's Exhibit Three (3) (fake Illinois license). He testified he spoke to Ricci who said that she assigned a sequential number to each patron who signed the minor book and that number was written on the patron's hand and could be seen by using a light. He testified that the Appellant's had a capacity of 130 and that night 110 patrons signed the minor book.

In regard to the new allegation, Roberta Ricci testified on behalf of the Appellant. She testified that she was using the minor book on May 9, 2014. See Appellant's Exhibit One (1) (pages from minor book for that night).

On cross-examination, Ricci testified that 110 people signed the minor book that night. She testified the purpose of the minor book is that if licensee is unsure of someone's age then the licensee has the patron sign the book. She testified that she also used the book to keep track of patrons' ID's as often patrons will slip their ID's to other patrons when the police come in so this way, she could track what ID each patron used for entrance. She testified that she is not just using the minor book for questionable people but has everyone sign the book except those she knows or who look her age (40

years). She testified that she turns away patrons and she had a hard time believing that she let in McCarthy and Fitzgerald with their creased ID's as she will not let in people with creased ID's. She testified that she thinks the two (2) seized ID's must have become creased after they were seized. She testified that she first visually checks patrons' ID's and then the bouncer uses the UV light on the ID's. She testified that she owns the building and is the president of the social club and the club is open to the public; though, the public guests do not sign a guest book.<sup>4</sup>

At the June hearing before the Department, in regard to the "old" allegation (revocation decision) Lauren Fleury testified on behalf of the Appellant. She testified that she has been employed by the Appellant since December 2013 and that the Ricci's father is called "Pops" and everyone who works there calls him "Pops." There was no cross-examination.

At the June hearing before the Department, in regard to the "old" allegation (revocation decision) Peter Ricci testified on behalf of the Appellant. He testified that his daughter owns the Appellant and he helps her at the club by doing anything that needs to be done and he is called "Pops" and responds to "Pops."

In terms of the two (2) prior matters, the Board first imposed an eight (8) day suspension after a March 31, 2014 hearing before the Board. The March 31, 2014 hearing before the Board involved allegations of underage sale and possession of alcohol on separate dates. See Joint Exhibit One (1) (certified record for suspension appeal including transcript of Board hearing).

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<sup>4</sup> As an aside, a guest book for social clubs (Class D license) is required by Rule 9 of the Department's *Commercial Licensing Regulation 8 – Liquor Control Administration*.

At the March Board hearing, Detective Patrick Creamer (“Creamer”), PPD, testified on behalf of the Board. He testified that on January 24, 2014, he performed a compliance check for underage drinking at the Appellant’s and that he approached two (2) individuals and stopped them who told him they were under 21 years and he confirmed that with their ID’s. He testified that he took samples of the alcohol and wrote them summons for court and sent the samples to the State laboratory. He testified on February 7, 2014, he went to the Appellant’s for a compliance check and found an individual with alcohol who he confirmed by ID was under 21 years old so he seized the alcohol. He testified that on March 1, he returned for another compliance check and found two (2) individuals with alcohol who he confirmed by ID were underage so he seized the drinks and sent them to the State laboratory. On cross-examination, Creamer testified that the individuals that he arrested had fake and real ID’s.

St. Lawrence testified on behalf of the Board. He testified that on January 24, 2014, he performed a compliance check at the Appellant’s and when he went inside the whole crowd dropped their drinks and left. He testified that he was able to stop and detain three (3) individuals who he determined were underage and he seized their drinks and samples were sent to the State laboratory and results were positive for alcohol. He testified he also performed a compliance check on February 7<sup>th</sup> and identified two (2) individuals that were under 21 years old and seized their alcohol and sent the samples to the State laboratory. He testified that on March 1, 2014 he accompanied Creamer to Appellant’s for an alcohol compliance check. He testified that the State laboratory

reports for samples taken January 24, February 7, and March 1, 2014 show the samples tested positive for alcohol. City's March hearing Exhibit One (1).<sup>5</sup>

Detective Joseph Amoroso, PPD, testified on behalf of the Board. He testified that on January 31, 2014, he went to the Appellant's for an inspection. He testified that he saw a woman move away from him and pass her drink off and he determined that she was underage. He testified that also that night Detective Sollitto identified another individual who was underage in possession of alcohol and both individuals were charged with underage alcohol possession. There was no cross-examination.

Ricci testified on behalf of the Appellant. She testified that she has owned the Appellant's for two (2) years. She testified that she has seized fake ID's at the club and given them to the police. She testified that uses an ID scanner every night. She testified that she is usually outside and makes a visual check of the ID and then inside the ID is checked again with the black light. She testified she also has an ID guide book.

On cross-examination, Ricci testified that she did not have a minor book and she feels if someone needs to sign a minor book, that person should not be in a bar. She testified that she purchased the ID scanner last year. She testified that she did not realize a minor book is mandatory under the law.

In terms of the second incident, the Board revoked the Appellant's License after the April 28, 2014 hearing before the Board. The April 28, 2014 hearing before the Board involved allegations of underage sale and possession on two (2) separate dates:

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<sup>5</sup> A copy of this exhibit was not included in the certified record. The undersigned notified the parties. The Appellant's attorney had indicated he did not object to the exhibits from below. At the Board hearing, St. Lawrence referred to February 2 for the test results but presumably it was February 7. There was no dispute over the dates for which tests were conducted.

March 17 and April 4, 2014. See Joint Exhibit Two (2) (certified record for revocation appeal including transcript of Board hearing).

At the April Board hearing, Tejada testified on behalf of the Board. He testified that on March 17, 2014, he performed a routine compliance check at Appellant's and he saw a subject sitting at the bar who put his drink down when he saw him (Tejada) and he ascertained that the subject was underage so he seized the drink and sent a sample to the State laboratory. He testified that the laboratory report confirmed the sample was alcohol. See April Hearing City's Exhibit One (1) (laboratory analysis report contained in Joint Exhibit Two (2)). On cross-examination, he testified that there were about 12 patrons at the bar and the other patrons were of age.

Creamer testified on behalf of the Board. He testified that he had gone to the Appellant's on April 4, 2014 to deliver a Show Cause Hearing Notice and he as he entered the building, he heard the owner say "cops" and someone inside say "what cops" as he walked up the ramp to the building. He testified the owner met him outside and as he talked to her, he saw many people leaving the building. He testified that later in the day, he and St. Lawrence returned to the Appellant's for a compliance check and saw two (2) subjects at the bar who put their drinks down when they saw him. He testified that he spoke to them both and ascertained that they had fake and real ID's and were actually 17 and 19 years old. He testified that he seized a sample from both of their drinks which were tested and found to be alcohol. See Hearing City's Exhibit Two (2) (report contained in Joint Exhibit Two (2)).

St. Lawrence testified on behalf of the Board. He testified that he saw Creamer deliver the Show Cause Notice and everyone inside started to come out. He testified



when they returned to the bar and went inside, everyone started leaving. He testified that he did speak to a man who he ascertained was underage and he wrote him up.

Ricci testified on behalf of the Appellant. She testified that she did not yell cops when Creamer came in. She testified that she owns Louie's which is down the block from Appellant's and she received a call from there that she did not have cash in the drawer. She testified she asked the bouncer to get "Pops," her father, and the bouncer called Pops upstairs and that is what the police would have heard. She testified that her father brought the cash down to her and she took it to Louie's. She testified that she did not "dump" (empty out) the bar. She testified that she visually checks ID's for birth date, expiration, height and then the bouncer checks again and uses the UV light and scanner. She testified that since these issues have arisen, she is using a minor book.

On cross examination, Ricci testified that she told the bouncer to call Pops and the bouncer said, "what did you say, Pops"? She testified that Pops did not come out of the building when she was speaking to Creamer.

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

#### **B. The Appeal before the Department**

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

The Department reviews sanctions to ensure statewide consistency and appropriateness in the situation. It also supports progressive discipline barring the rare

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

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

### C. Arguments

The Appellant argued that the evidence for the January 24 and 31, February 7, and March 1 incidents (suspension) did not support a finding that underage drinkers were found at the Appellant's. It argued that the only evidence is the police officers' testimony saying the name and purported birth dates of the minor and that evidence should have been introduced of the legitimate and purported fraudulent ID's of the supposed underage drinkers in order to establish that there actual underage drinkers inside. It argued that there was no evidence of the disposition of those charged with underage drinking.

The Appellant argued that the evidence for the March 17 and April 4, 2014 incidents (revocation) is only police officers' testimony that they identified underage people but there no evidence of names or driver's licenses or fraudulent ID's. The Appellant argued that Pop's testimony made it clear that no one was shouting cops but rather were calling to Pops. The Appellant argued it had a good faith reliance on the minor book which is a defense to serving underage patrons under R.I. Gen. Laws § 3-8-6. The Appellant argued that without identification of the underage drinkers, it cannot defend itself against the charges.

The Board argued that the police officers who testified all were experienced veterans and were able to identify patrons in all cases except for three (3) identified minors and samples were taken of the drinks which tested positive as alcohol. It argued that the police testimony of apprehending underage drinkers is sufficient and there is no requirement that the police make copies of IDs while in the field as that would not only be burdensome but unnecessary as the testimony is sufficient. It argued that experienced officers tasked with investigating underage drinking gave uncontroverted and consistent testimony and that the

undersigned can weigh the credibility of the officers and make the inference from the evidence that underage drinking occurred.

The Board argued that misrepresentation of age is not a defense pursuant to R.I. Gen. Laws § 3-8-6 so that the introduction of fraudulent ID's is not necessary to establish that there were minors in possession of alcohol. It argued that the reason it introduced the fraudulent ID's was to demonstrate the Appellant's failure to inspect ID's that were obviously false. It argued that the use of a minor book is the only defense to possession of alcohol by a minor but it is a rebuttable defense. The Board argued that the Appellant was improperly using the minor book on May 9, 2014 by having everyone sign so the book was not being used within the intent of the law. The Board argued that the revocation be upheld as the Appellant has engaged in a series of infractions.

#### **D. The Allegations**

The Appellant's argument that the Board needed to show the disposition of the charges against underage drinkers or the patrons' fraudulent ID's in order to establish that there was underage drinking in the Appellant's is erroneous. Rather the issue is what weight should be given to the police officers' testimony regarding their apprehension of minors in possession of alcohol. For the suspension hearing, evidence was introduced regarding samples taken of drinks seized from individuals that the officers testified were underage. For the revocation hearing, evidence was introduced regarding three (3) samples taken of drinks seized from individuals that the officers testified were underage that tested positive for alcohol. Also included in the revocation hearing exhibits was the charge against one of the individuals from whom the sample was taken. For the May 9, 2014 incident hearing, the officers introduced the two (2) fake ID's that they testified

were used by the underage patrons. While the exhibits by themselves would not show underage drinking, the exhibits bolster the officers' testimony regarding their interactions with the patrons identified as underage and the officers' seizure and testing of samples.

**a. March Board Hearing (suspension)**

Several officers testified on behalf of the Board including the detective in charge of the Licensing Enforcement Unit. They all credibly testified that on four (4) different nights, they found patrons who were underage and seized drinks' samples that tested for alcohol. There does not need to be a conviction or the actual fake ID used to find that underaged patrons were in possession of alcohol. The testimony was that the patrons had real and fake ID's and their drinks were seized and tested as alcohol.

**b. April Board Hearing (revocation)**

Again there was credible testimony from the police that on two (2) nights, underage patrons with alcohol were found at Appellant's. The parties disputed whether the term cops or pops was used. Creamer's testimony was that he was outside when he heard the term cops being used. Pops, the owner's father, testified that everyone calls him Pops. On the basis of the testimony regarding Pops and cops, the undersigned cannot conclude that the Appellant's staff was warning patrons about cops. If the Appellant's staff were warning the patrons, they did not do a very good job as some of the underaged patrons were caught drinking a short time later.

**c. New Allegation (May 9, 2014)**

The testimony regarding the new allegation after revocation showed the fake ID's used by patrons at the Appellant's. The owner herself testified that the ID's were fake and she could not believe the patrons were let in. The testimony of the police officers and the

owner and staff is that two (2) people check ID's and there is an UV light attached to the wall to check ID's. Obviously care was not taken on May 9, 2014 to properly inspect the ID's. The failure to properly inspect ID's is particularly troublesome in light of the Appellant's very recent underage drinking incidences spanning six (6) different nights over four (4) months (January to April).

The Appellant had not used a minor book for the incidences prior to May 9, 2014. Ricci's testimony was that everyone on May 9, 2014 signed the minor book (except people she knew) and she tracked the ID's used by giving everyone a number. R.I. Gen. Laws § 3-8-6 provides in part as follows:

Unlawful drinking and misrepresentation by underage persons – Identification cards for persons twenty-one and older. – (a) It is unlawful for:

(1) A person who has not reached his or her twenty-first (21st) birthday to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing or having served or delivered to him or her alcoholic beverages; or

(2) A person who has not reached his or her twenty-first (21st) birthday to consume any alcoholic beverage on premises licensed for the retail sale of alcoholic beverages or to purchase, attempt to purchase, or have another purchase for him or her any alcoholic beverage; or

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(c)(1) Every retail Class A, B, C, and D licensee shall cause to be kept a book or photographic reproduction equipment which provides the same information as required by the book. That licensee and/or the licensee's employee shall require any person who has shown a document as set forth in this section substantiating his or her age to sign that book or to permit the taking of his or her photograph and indicate what document was presented. Use of the photographic reproduction equipment is voluntary for every Class A, B, C and D licensee.

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(3) If a person whose age is in question signs the sign-in as minor book or has a photograph taken before he or she is sold any alcoholic beverage and it is later determined that the person had not reached his or her twenty-first (21st) birthday at the time of sale, it is considered prima facie evidence that the licensee and/or the licensee's agent or servant acted in good faith in selling any alcoholic beverage to the person producing the document as set forth in this section misrepresenting his or her age.

(4) Proof of good faith reliance on any misrepresentation is a defense to the prosecution of the licensee and/or the licensee's agent or servant for an alleged violation of this section.

While it might be useful for a licensee to track to use of ID's by patrons, the intent of the statute in using a minor book is for those to sign whose age is in question. The purpose is not to have everyone sign even if his or her age is in not in question. Thus, the Appellant cannot have a good faith reliance on the minor book if it is being used for practically everyone (except those known personally by the owner) to track ID's and not being used for those patrons whose age is in question.<sup>6</sup>

**E. When Revocation of License is Justified**

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

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

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

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<sup>6</sup> The statute provides that good faith reliance on the minor book when used for someone whose age in question can be used as a defense to a prosecution of a licensee or licensee's agent under “this section.” See R.I. Gen. Laws § 3-8-6(d)(1) for prosecution provisions. This matter is liquor licensing matter. Nonetheless, the blanket use of the minor book is not a good faith reliance by the Appellant.



legislature and accepted such conditions by becoming licensed. *Therault v. O'Dowd*, 223 A.2d 841 (R.I. 1966). See also *Schillers and Scialo v. Smith*, 99 R.I. 738 (R.I. 1965).

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 *Stagebands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.) (disturbances and a shooting on one night justified revocation) and *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (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); *PAP Restaurant, Inc. v. d/b/a Tailgate's Grill and Bar v. Town of Smithfield, Board of License Commissioners*, DBR No.: 03-L-0019 (5/8/03) (series of infractions justified revocation).

#### **F. Licensing History**

The Appellant has violations going back to 2002 but more recently in 2010, the Appellant's License was suspended for two (2) days for underage sales. In 2011, an administrative penalty of \$1,000 was imposed for 2010 violations for two (2) underage sales, open bar, and happy hour. In 2012, an administrative penalties totaling \$1,100 were imposed for 2011 violations for underage sale and entertainment without a license. In 2013, an administrative penalty of \$1,000 was imposed for two (2) counts of underage sale and two (2) counts for underage possession. See Joint Exhibit One (1).

**G. What Sanction is Justified**

*Pakse* upheld a revocation of class A liquor license when the liquor store had four (4) incidents of underage sales in less than three (3) years. The local licensing authority had imposed a two (2) day suspension for the first offense, four (4) days for the second offense, 15 days for the third offense, and revocation for the fourth offense. The local authority concluded that the progressive discipline was ineffective as the licensee had a fourth violation within two-and-a-half years.

In this matter, the Board chose to impose an eight (8) day suspension on the Appellant's for four (4) different incidences of underage drinking in a three (3) month period (January, February, and March). The Appellant then had another underage incidence in March and the following month. In response to those two (2) violations, the Board revoked the License. The Department will uphold progressive discipline and wait to revoke a license for a series of infractions unless the violation is egregious. Here, the discipline jumped from eight (8) days to revocation. In light of the close proximity in time to the prior incidents of underage drinking, a sanction longer than eight (8) days is appropriate but a suspension is more suitable than a revocation. The revocation is reduced to 45 days. Only a month later, on May 9, 2014, the Appellant was found to have two (2) underage patrons who used obviously fake ID's. Such ID's could not have been properly reviewed by Appellant's staff. Such a violation within such a short time after the several underage violations within four (4) months mandates a long suspension. Thus, for the May 9, 2014 violation, the License is suspended for 60 days.<sup>7</sup>

The Appellant had a series of underage drinking violations within five (5) months. The close proximity of these violations and the failure to properly check ID's mandates

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<sup>7</sup> It should be noted that *Pakse* had its license revoked for the fourth violation in less than three (3) years.

lengthy progressive suspensions. Thus, the Appellant's liquor license has been suspended for these series of infractions for a total of 113 days.

#### 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 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 reset and any violation would be considered a first offense.

The Appellant had administrative penalties imposed within three (3) years prior to May 1, 2014. For the eight (8) day suspension, the testimony actually totaled more than seven (7) underage patrons for the days in question. Thus, the administrative penalties imposed by the Board are the statutory minimum administrative penalty for subsequent offenses (\$1,000 per underage patron). For the revocation (now reduced to 45 days), the testimony established one underage patron on March 17, 2014 and two (2) on April 4, 2014 (in violation of R.I. Gen. Laws § 3-5-21). In terms of violations of the liquor license, the administrative penalty of \$7,000 is reduced to \$3,000 (\$1,000 per underage patron in violation of R.I. Gen. Laws § 3-5-21).

## **VI. FINDINGS OF FACT**

1. On or about May 1, 2014, the Board notified the Appellant that its License had been suspended for eight (8) days and a \$7,000 administrative penalty imposed.

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

3. By order dated May 8, 2014, the Department stayed the eight (8) day License suspension but not stay the administrative penalty.

4. On or about May 13, 2014, the Board notified the Appellant that its License had been revoked and a \$7,000 administrative penalty imposed.

5. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision to the Department.

6. By order dated June 4, 2014, the Department granted the Appellant's motion to stay the revocation of License provided the Appellant remained closed pending the appeal and issuing the decision and denied the Appellant's motion to stay the administrative penalty and vacated the order issued on May 8, 2014.

7. Pursuant to Section 23(c) of *Central Management Regulation 2 Rules of Procedure for Administrative Hearings*, these two (2) appeals were consolidated.

8. Pursuant to R.I. Gen. Laws § 3-7-21(c), the parties agreed to base part of the appeal on the record before the Board as well as to provide additional testimony relating to the revocation decision.

9. A hearing was held on June 4, 2014 relating to the suspension and revocation decisions as well as for a new allegation for May 9, 2014.

10. Written closings were timely received by August 7, 2014.

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

## VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-5-1 *et seq.*, R.I. Gen. Laws § 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 the Appellant to partially reduce sanctions and by the Board to impose further sanctions.

**VIII. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends as follows:

- 1) the Board's May 1, 2014 decision suspending the Appellant's License for eight (8) days be upheld;
- 2) the Board's May 13, 2014 revoking the Appellant's License be reduced to a 45 day suspension;
- 3) the Appellant's License be suspended for 60 days for the May 9, 2014 incident;<sup>8</sup>
- 4) the Board's May 1, 2014 decision imposing a \$7,000 administrative penalty is upheld; and
- 5) the Board's May 13, 2014 decision imposing a \$7,000 administrative penalty is reduced to \$3,000.

Dated: August 28, 2014

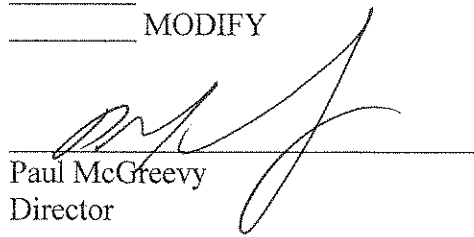
  
Catherine R. Warren  
Hearing Officer

**ORDER**

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

ADOPT  
 REJECT  
 MODIFY

Dated: 2 Sept 2014

  
Paul McGreevy  
Director

<sup>8</sup> The Appellant's has been closed pending the appeal and issuance of the decision. If the time that Appellant was closed pending this decision is more than 113 days, the length of suspension shall be considered to be equivalent to time closed. If the time the Appellant has been closed is less than 113 days, the Appellant shall remained closed until its closure time equals 113 days.

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 2<sup>nd</sup> day of ~~August~~ <sup>September</sup>, 2014 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, RI 02904 and Sergio Spaziano, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903 and by hand delivery to Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Bldg. 68-69, Cranston, RI 02920.

