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

SATIN DOLL, LLC **d/b/a Satin Doll** **Appellant,**	:	
v.	:	**DBR No. 13LQ157**
The City of Providence Board of Licenses, **Appellee.**	:	

DECISION AND ORDER

I. INTRODUCTION

On December 11, 2013, the City of Providence Board of Licenses ("Board") rendered a decision ("Decision") imposing a $ 4,000 fine and suspending all of the Appellant's business licenses, including the liquor license, for a period of twenty (20) days beginning on December 29, 2013, through and including January 9, 2014 against liquor licensee Satin Doll, LLC d/b/a Satin Doll ("Appellant") for alleged incidences occurring on October 11, 2013. Specifically, the Decision found the Appellant in violation of "permitting the laws of the state of RI to be violated" and "two counts of causing or permitting prostitution on the premises." The Notice of the hearing held before the Board specifically cited R.I. Gen. Laws § 3-5-23, § 11-34.1-4 and 7 as the applicable laws.

The Appellant timely appealed the Decision to the Department of Business Regulation ("Department") in accordance with R.I. Gen. Laws § 3-7-21. The undersigned Hearing Officer held a full hearing on the merits of the case on January 15, 2014. At that time, the Board elected

to rest its case in chief on the record from the Board proceeding, the transcript of which was accepted into the administrative record pursuant to R.I. Gen. Laws § 3-7-21(c)("Board Transcript"). Before the undersigned, the Appellant presented the testimony of a female with the stage name "Caramel" who was a dancer employed at the Appellant's establishment during the alleged incidences. The Board presented the testimony of Detective Schiavulli and Sergeant Scion.[1] At the hearing, the Appellant moved to dismiss the matter on the basis of insufficiency of notice. After the hearing, the Appellant and the Board each submitted a Memorandum in lieu of closing argument (referred to herein as Appellant's Memorandum and Board's Memorandum, respectively). The administrative record was closed February 5, 2014.

II. JURISDICTION

The Department has jurisdiction to review local liquor licensing decisions under R.I. Gen. Laws § 3-7-21, subject to relevant provisions of the Rhode Island Administrative Procedures Act, § 42-35-1 *et seq.* The Department's jurisdiction clearly refers to liquor licenses issued under Title 3 ("Alcoholic Beverages"). *Chernov Enterprises, Inc. v. Scuncio*, 107 R.I. 439, 440 268 A.2d 424, 425 (R.I., 1970)("Title 3 is the legislation which pertains to alcoholic beverages.") The Department does not have jurisdiction to review the suspension of any other licenses held by the Appellant, *i.e.* entertainment, victualing, etc.[2] Nor will the Department review violations of the City's entertainment ordinances, *i.e.* Providence Code of Ordinances §

[1] Sergeant Scion's testimony was limited to the question of what prompted the investigation on the incident date.
[2] The Department does not have jurisdiction over separate entertainment licenses issued under R.I. General Laws § 5-22-1, which provides "city councils may license, regulate, and in those cases specifically set forth in 5-22-5, may prohibit and suppress ... shows and performances in their respective towns, conforming to law." R.I. Gen. Laws § 3-7-7.3 only confers jurisdiction when the restrictions on entertainment imposed on Class B licensees are structured as *liquor license conditions*. Neither does the Department have jurisdiction over separate victualing licenses that are issued pursuant to R.I. Gen. Laws § 5-24-1(a), which provides "[a]ny town or city council has the power to regulate, including the setting of hours of operation, the keeping of taverns, victualing houses, cookshops, oyster houses, and oyster cellars in the town or city, by granting licenses for those activities." Chapters 5-22 and 5-24 provide no avenue for appeal to the Department.

13-198, as such violations pertain specifically to an entertainment licensing under a local regulatory scheme separate and apart from the liquor license issued by the City of Providence. For the foregoing reasons, this Decision is limited to review of the suspension of the license to sell liquor and will not make any findings with respect to Providence Code of Ordinances § 13-198.

However, it should be noted that the Department has jurisdiction over entertainment-related conditions imposed on a liquor license under R.I. Gen. Laws § 3-7-7.3. Accordingly, the Department has the power review violations of entertainment ordinance provisions when the penalty is specifically imposed on the liquor license. And, as the superlicensing authority over all liquor control matters, the Department also has the power to make final determinations as to whether provisions of Title III are violated if a municipality uses Title III provisions to penalize another license held by an appellant.

III. STANDARD OF REVIEW

The Department has the broad authority to "confirm or reverse the decision of the local board in whole or in part" under R.I. Gen. Laws § 3-7-21(a). Judicial interpretation of § 3-7-21 in light of the legislative intent to vest the Department with broad discretion as a "superlicensing authority" gives the Department the power of "de novo" review. *Hallene v. Smith*, 98 R.I. 360, 363 (R.I., 1964). *See also Jake & Ella's, Inc. v. Dep't of Bus.* Regulation, 2002 WL 977812 (R.I. Super., 2002)("the discretion given to the DBR goes as far as to vest the hearing officer with the authority to review the local board partially de novo and partially appellate if he/she sees fit.") In other words, the Department "independently exercises the licensing function"[3] in reviewing the record of the municipal hearing and any additional evidence presented at the Department hearing.

[3] *Cesaroni v. Smith*, 98 R.I. 377, 379 (R.I., 1964).

IV. DISCUSSION

A. Adequacy of Notice

The Appellant challenges the adequacy of notice of the allegations prior to the Board hearing. Appellant was provided with a notice alleging specific statutory and municipal violations, including R.I. Gen. Laws § 3-5-23, § 11-34.1-4 and 7, and also with a copy of the police incident report annexed thereto which provided Appellant with a narrative summarizing the specific facts which gave rise to the allegations.[4] Based on the below discussion, the Appellant's motion to dismiss on the basis of insufficiency of notice is denied.

1. Defects in the Board's proceeding do not affect the Department's jurisdiction.

In *Hallene v. Smith*, the Rhode Island Supreme Court explained that defects in the proceeding of the local licensing Board do not affect the liquor control administrator's jurisdiction. 98 R.I. 360, 368 (1964). In that case, "[t]he petitioner has urged also that the hearing of the local board was illegal in that she was denied a fair and impartial hearing by reason of its action in notifying her that to contest the validity of the charges would result in an imposition of penalties of greater severity than would be imposed otherwise." Id. Thus, the Court was faced with the question of "whether this action by the local board impairs the jurisdiction of the administrator to conduct the hearing de novo provided in § 3-7-21" and concluded that it was "unable to perceive that it does," given the nature of the "distinct and unrelated proceedings." Id. The Court explained that "the jurisdiction of the administrator is not

[4] From the certified record, it appears that the "notice" issued to the Appellant was in the form of a letter to the Chairman of the Board from the City Solicitor's office dated October 23, 2013, requesting that the Board issue notice of a show cause hearing and listing the cited statutory provisions and the Code of Ordinances provision. With this notice, it also appears that the Appellant was forwarded a copy of the 10/11 incident police reports prior to the hearing. *See* Board Transcript at 5. It is evident that the Appellant was aware of the three substantive statutory provisions as the record also includes a "Request for Detailed statement of Issues for Hearing" to the Board dated November 13, 2013 in which the Appellant asks, in relevant part: "What conduct of Satin Doll do you allege constitutes permitting a violation of RIGL § 3-5-23 and what conduct proscribed in that statute was allegedly violated and by who?" "What conduct do you allege Satin Doll did to either cause or permit the violations of 11-34-1, 4 and 7."

adversely affected by improper conduct on the part of the board." Id. "[T]he acts of the local board, whatever the nature thereof, are without materiality as to the propriety of an exercise by the administrator of the jurisdiction conferred upon him by § 3-7-21." Id. *Hallene* squarely applies to the instant case. Therefore, the Department will not dismiss the case on the basis of the claim that the board erred by providing insufficient notice.

2. Notice of the proceeding was adequate.

Assuming, *arguendo*, that lack of adequate notice would be grounds for the Department to exercise its discretion to dismiss the matter, the Department finds that the notice was adequate. It is true that a liquor licensee "has a property interest in its business and its continuation which entitles it to the benefits of due process, and a municipality should notify a licensee with reasonable particularity of the charges it will be called upon to meet at any hearing concerning its continued retention of a license." *28 Prospect Hill St., Inc. v. Gaines*, 461 A.2d 923, 925 (R.I. 1983). However,"[i]n Nocera Bros. Liquor Mart Inc. v. Liquor Control Hearing Board, 84 R.I. 214, 122 A.2d 903, 123 A.2d 927, [the Rhode Island Supreme Court] made it clear that the notice required to prosecute violations of the liquor regulations need be no more specific than one required in a complaint charging a crime." *Cesaroni v. Smith*, 98 R.I. 377, 381 (1964). In *Cesaroni*, the letter from the administrator quoting the language of the Rule alleged to be violated was sufficient and the motion to dismiss was properly denied.

In the instant case, with respect to the allegation under R.I. Gen. Laws § 3-5-23, the Appellant complains that the "[n]otice is vague as to which subsection in this statute was allegedly violated." Appellant's Memorandum at 7. Subsection (a) pertains to the circumstances in which the bond is put in suit; (c) provides for a five year disqualification period following revocation, and (d) provides that revocation shall not affect recovery on the bond. A cursory

reading of this statute quickly reveals that only subsection (b) sets forth grounds for disciplinary action on a liquor licensee. Failure to cite to the only possibly applicable provision is not reason for dismissal. Moreover, the citation is accompanied by the description "permitting the laws of the State of Rhode Island to be violated in the neighborhood."

The Appellant also complains that, with respect to the allegations under R.I. Gen. Laws § 11-34.1-4 and 7, that the notice is vague as to which section of the statutes is alleged and/or what specific conduct prescribed by each statute is at issue. Appellant's Memorandum at 8, 11. Because a criminal complaint citing a provision with multiple violations would be adequate for conviction under any one of those violations, it is adequate in a liquor case. *Cesaroni, supra.* "When a statute makes it a crime to do this, or that, or that, mentioning several cognate matters disjunctively, the complaint or indictment may ordinarily charge them all conjunctively in a single count." *State v. Jamgochian*, 109 R.I. 17, 21, 279 A.2d 923, 925-26 (1971). "[P]roof of either of the offenses charged will support a conviction." Id. at 926. Therefore, the fact that § 11-34.1-4 and 7 make a range of commercial sexual activities unlawful, defining "loitering" and "pandering" broadly, does not fail to adequately notify the Appellant of the conduct being alleged.

Neither did failure to cite the provision that proscribes prostitution itself, as distinguished from loitering render the notice inadequate. Appellant's Memorandum at 6. R.I. Gen. Laws § 11-34.1-4 is a separate section the violation of which is grounds for disciplinary action against a licensee; § 11-34.1-2 is not a requisite citation to notify the Appellant of the loitering charge. In fact, R.I. Gen. Laws § 11-34.1-4 prohibits loitering for "prostitution *or* other commercial sexual activity." The "notice" specifically cites § 11-34.1-1 as a reference for the definition of "commercial sexual activity." Finally, the reference to the subject "license(s)" impermissibly

vague. Appellant's Memorandum at 14. The Board of Licenses is the disciplinary authority for multiple licenses and provided reasonable notice that all such licenses could be subject to disciplinary action based on the allegations.[5] Therefore, undersigned cannot find the claimed "vagueness" is ground for dismissal in this case.

B. Standard under R.I. Gen. Laws § 3-5-23

R.I. Gen. Laws § 3-5-23(b) provides, in relevant part, that "[i]f any licensed person...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...the board...may suspend or revoke the license or enter another order."[6] Accordingly, if the Board establishes that the Appellant engaged in conduct or permitted conduct that is prohibited by § 11-34.1-4 and/or § 11-34.1-7, there is cause for disciplinary action against the Appellant under § 3-5-23(b).[7, 8]

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[5] Contrary to the Appellant's characterization, the Decision makes it clear that all licenses issued by the Board were suspended. Appellant's Memorandum at 14.

[6] Arguably, the part of R.I. Gen. Laws § 3-5-23 prohibiting "any licensed person [to] permit[] 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" also applies. Sexual acts have been considered disorderly under this clause. *Edge-January, Inc. v. Pastore*, 430 A.2d 1063, 1066 (R.I. 1981)("In the instant case, testimony was elicited from several of the neighbors that in the vicinity of [the establishment] young people would urinate and engage in *sexual activities* in public."); *The Minden Corp. v. Sarkas*, C.A. 75-1938, 1976 WL 177015 (R.I. Super. Feb. 18, 1976)("Many of the eyewitnesses described assaults, car burnings, public urination, *sexual episodes* in parked automobiles owned by neighbors and a number of other incidents which could properly be associated with the patrons of [the establishment].")

[7] In proving a liquor license violation, "[t]he burden is on the officer or board to prove the facts which constitute the cause which are alleged as grounds for the revocation or suspension of a license, and not on the licensee." 48 C.J.S. Intoxicating Liquors § 243. In other words, "[u]ntil the licensing authority gives substantial evidence of the violation of the liquor laws by a licensee, the licensee is not obliged to prove his or her innocence." Id.

[8] This decision does not go so far as to hold that every single law of the state should result in disciplinary action against the liquor licensee. By way of reference, an Illinois appellant court explained: "The local liquor control commissioner may suspend or revoke a liquor license for cause, and the violation of any law, ordinance, or applicable regulation generally constitutes cause. Such violations, however, must be of statutes, ordinances, or regulations fairly related to liquor control. Such violations committed on the premises include attempted bribery of a police officer, a bartender's discharging of a firearm at a patron during a barroom brawl, gambling, lewd conduct, prostitution, unlawful sale of narcotics, unlawful sale of obscene material, and the sale of liquor to minors." *Nappi v. License Appeal Comm'n of City of Chicago*, 50 Ill. App. 3d 329, 330, 365 N.E.2d 612, 613-14 (Ill. App. Ct. 1977). Violations of Chapter 11-34.1 are fairly related to liquor control. In fact, the General Assembly specifically referenced that chapter's predecessor, chapter 34 of title 11, as a violation the conviction of which triggers the municipality's right to recover on the "penal sum of the bond." § 3-5-23(a).

Appellant argues that "[n]one of the Petitioners agents were charged with any crime;" "the City did not charge anyone." Appellant's Memorandum at 11. However, due to the separate and distinct nature of the administrative and criminal proceedings, the case law is clear that a criminal conviction is not necessary to show violation of a statute bearing criminal penalties when disciplining a licensee under § 3-5-23.

In *Di Traglia v. Daneker*, the Rhode Island Supreme Court considered the decision of the liquor control administrator that affirmed the decision of the board of license commissioners of Cranston to revoke a liquor license for "selling or having suffered to be hold or delivered intoxicating beverages to minors in violation of General Laws 1938, chapter 165, § 3, as amended." 83 R.I. 227, 229 (1955). The recent amendment to § 3 had criminalized the sale of intoxicating liquors to minors. Id. at 231. The petitioner argued that "to revoke his license under chap. 165, § 3, he must first be convicted in court of law, otherwise there would be an improper delegation of judicial power." Id. at 230. The Court disagreed and found that the board and administrator could revoke a liquor license for violations of provisions of law that carry criminal penalties. The Court explained that "General Laws 1938, chap. 163, § 10, as amended..., provides, among other things, that if any licensed person shall permit any of the laws of this state to be violated in the place where his is licensed to sell intoxicating liquor, *in addition* to any punishment, penalty, or penalties which may be prescribed by statute for such offense...the designated board, body or official may suspend or revoke his license or enter any other order thereon." Id. (emphasis in original). The court opined that "[t]he proceedings by the local authorities to suspend or revoke his license for unlawful sales of alcoholic beverages to minors, as here, are entirely separate and distinct from a criminal prosecution by the state for that same offense. Id. at 232-233. "The two proceedings are not interdependent; they are coexistent and

not mutually exclusive." Id. at 232. *See also Chernov Enterprises, Inc. v. Sarkas*, 109 R.I. 283, 288 (1971)("While one is in the nature of an action in rem, the other is against a licensee personally."). As such, the Court rejected the argument that "a local licensing board, body, or official was without authority to suspend or revoke a license on that ground...until after final conviction in a criminal prosecution for selling liquor to minors." Id. at 233.

In *Bd. of License Comm'rs, Town of Tiverton v. Pastore*, the Superior Court overturned the liquor control administrator's ruling that a liquor license "could not be revoked on the basis of presence of stolen goods because there had been no criminal conviction for receiving stolen goods." 78-2659, 1980 WL 340254, *1 (R.I. Super. Aug. 6, 1980) appeal denied, judgment aff'd sub nom. *Bd. of License Comm'rs of Town of Tiverton v. Pastore*, 463 A.2d 161 (R.I. 1983). The court listed three reasons why "the Administrator erred in holding that a criminal conviction is a prerequisite for revocation in these circumstances. Id. "First and fore-most, the statute does not expressly state that a conviction is necessary, and the statutory language does not appear to imply that one is necessary." Id. "If the licensee "shall permit any of the laws of this state to be violated therein" and if such a violation is shown "to the satisfaction of the board" or administrator, then the board or administrator may revoke the license." Id. "Second, our state Supreme Court has stated that a liquor lincese [sic] revocation proceeding and a criminal action based on the same incident are entirely separate proceedings which are in no way dependent upon one another." Id. "Third, the power of the legislature to regulate strictly and pervasively the sale of alcoholic beverages by delegating the control of liquor traffic to administrators and local boards has long been recognized." Id. "To hold that a board or administrator may not revoke a liquor license without a prior criminal conviction would be tantamount to delegating

license revocation authority to the prosecuting arm of the government because the prosecutor has discretion in determining which criminal acts will be prosecuted." Id.[9]

The term "permitting" in R.I. Gen. Laws § 3-5-23 is interpreted broadly as meaning preventing violations from occurring on the premises.[10] [I]t is the responsibility of an alcohol beverage licensee so to supervise the operation of a business carried on pursuant to his license as to make certain that the laws to which his license is subject are not violated." *Scialo v. Smith*, 99 R.I. 738, 741 (1965). *See also DiTraglia v. Daneker*, 83 R.I. 227, 115 A.2d 345. In applying § 3-5-23, "what is all-important and decisive is whether there has been a violation of the law;" "[t]he liquor laws penalize for infractions of laws...[and] make a licensee absolutely accountable for what happens on his premises." *Vitali v. Smith*, 105 R.I. 760, 762 (1969). R.I. Gen. Laws § 3-5-23 "does not require evidence of consent either expressed or implied." *Therault v. O'Dowd*, 101 R.I. 395, 398 (1966). "That he is not aware of what is going on is not available as an excuse or a defense." *Vitali*, id. at 762.[11, 12, 13] This is true even in cases involving a "single isolated

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[9] *See also Chernov*, 109 R.I. at 288 (upholding non-renewal for violating Sunday entertainment laws and suborning perjury where no evidence of criminal conviction of suborning perjury: "petitioner does not contend that it would have been abuse of discretion to reject its application upon proof that it was convicted of violating the Sunday entertainment laws or that its president had been found guilty of suborning the perjury of the two minors who were served beer."); *Scialo*, 99 R.I. at 739 (upholding finding that petitioner had "permitted gambling" under 3-5-23 even though "petitioner pleaded nolo to the police charge that he had permitted gambling on the premises").

[10] As aptly put by a court of another jurisdiction, "[t]he word 'permit' is a word of considerable elasticity; it lacks clearcut and precise definiteness. As defined by Webster and others, 'permit' implies no affirmative act. It involves no intent. It is mere passivity, abstaining from preventative action." *Dorris v. McKamy*, 40 Cal. App. 267, 274, 180 P. 645 (1919)(citing *In re Thomas,* 103 Fed. 272, 274.)

[11] *Scialo*, *Therault*, and *Vitali* each involved a licensee that "permits any gambling or unlawful gaming." There is no reason to conclude that the term "permit" in the clause at issue here, "permits any of the laws of this state to be violated," should be interpreted differently. Subsequent court cases apply *Scialo* and *Therault* to cases not involving gaming or gambling. In fact, the Appellant cites these two cases in its Memorandum as setting the applicable "heavy burden on the license holder." Appellant's Memorandum at 3.

[12] Further explaining "the meaning of the word 'permit' as it is used in G.L. § 3-5-23," the Superior Court has opined that "[c]onsidered in that context it is clear that the legislature meant to do more than prohibit a licensee from condoning, supporting or participating in the proscribed conduct...Rather, it intended to impose an affirmative duty upon the licensee to effectively supervise his patrons so as to prevent that conduct from occurring." *Balch v. Pastore*, C.A. 793198, 1983 WL 486780 (R.I. Super. Aug. 15, 1983). A violation may be established "if the licensee fails to supervise the premises in the manner prescribed by statute even if the licensee is unaware of the illegal activity on the premises." *Pop's & Pizzi Lounge, Inc. v. Voccola*, P.C. 87-5181, 1989 WL 1110319 (R.I. Super. Aug. 31, 1989)(discussing permitting drug infractions occurring on the premises and citing *Therault v.*

violation." Id. at 761. "Onerous though this burden may be, it is within the police power of the legislature to impose it." *Scialo, supra.*[14]

In *Scialo*, the Rhode Island Supreme Court explained the relevant evidentiary burden to show a violation of § 3-5-23(b): "[t]he administrator would be justified in finding that the licensee had permitted [a violation of law] within the licensed premises if there were any legal evidence from which he could find, or reasonably infer, that petitioner had failed in his obligation to maintain an efficient and affirmative supervision of the business to which his license applied." Id. at 141-142. Any disciplinary action for breach of the duty must be based on "legally competent evidence." *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269, 274 (R.I. 1984)("cause...that would justify revocation...must be bottomed upon substantial grounds and established by legally competent evidence"). "Legally competent evidence is indicated by the presence of 'some' or 'any' evidence supporting the [decision maker's] findings." *Case Dimario, Inc. v. Rhode Island Dep't of Bus. Regulation*, PC/02-1642, 2004 WL 1542069 (R.I. Super. June 16, 2004)(citing and quoting *Rhode Island Public Telecommunications Auth. v. Rhode Island State Labor Relations Bd.,* 650 A.2d 479, 485 (R.I.1994)). "Legally competent evidence" of a violation § 3-5-23 includes any "the evidence and the reasonable inferences therefrom." *Manuel J. Furtado, Inc. v. Sarkas*, 118 R.I. 218, 224, 373 A.2d 169, 172 (1977). *See also Cesaroni,*

O'Dowd, 101 R.I. 395, 223 A.2d 841 (1966)). *See also Manuel J. Furtado, Inc. v. Sarkas*, 74-674, 1975 WL 169939 (R.I. Super. Mar. 13, 1975)("It is not necessary under *Section 3-5-23* that the licensee know that a crime is being committed on his premises;" "[i]t is also not necessary for the Administrator to find that the licensee has consented to the unlawful conduct.")(citing and quoting *Scialo* and *Therault*). To be precise, *Balch* and *Furtado* interpret the term "permits" in the context of permitting the premises to become disorderly; however, there is no reason to interpret the term "permits" differently in the instant case.

[13] See also Scialo, supra, 99 R.I. at 741("[n]or is there merit in petitioner's companion contention that a licensee is not responsible for the conduct of his servant or agent, absent personal knowledge of that conduct as would be the case in a criminal complaint.")

[14] For example, in *Therault*, the Rhode Island Supreme Court found against the petitioner despite the testimony that the the illicit conduct occurred at "the busiest of the day and that it was not probable that the petitioner, busily engaged in serving patrons, could have been aware of [another patron's] activities" and that the licensee "had no knowledge of any [illicit activity] being conducted on his premises and would not have tolerated it under any circumstances."

supra, 98 R.I. at 384 (upholding a decision where concluded that "evidence here is, in our opinion, clearly susceptible of reasonable inferences" of a violation); *Edge-January, Inc. v. Pastore*, 430 A.2d 1063, 1066 (R.I. 1981)("reasonable inferences must be drawn from facts in evidence").[15]

C. Evidence of violating § 11-34.1-4 and § 11-34.1-7

As applies to the instant case, R.I. Gen. Laws § 11-34.1-4 prohibits "any person to stand in...any public or private place...and attempt to engage a passerby in conversation...for the purpose of prostitution or other commercial sexual activity." The evidence establishes that two employees did engage undercover police officers in conversation for the purpose of prostitution when they uttered words offering oral and manual stimulation in exchange for $150.00.[16]

Before the Board, Detective Patrick Potter testified that while undercover he was solicited by a female dancer with the stage name "April" in the Appellant's establishment. Potter was offered a dance for $ 25.00 in the private lap dance booths in the back of the establishment.[17] During the dance, she offered a "hand job" (manual stimulation) for $25.00 or a "blow job" (oral sex) for $35.00.[18] Potter also testified that "April" stated "we could do it right there, that it was private enough with the curtain to do everything right there in that booth," but "if I wasn't conformable in that booth we could go to a more private area of the club," referencing the "Champagne Room" at the price of $150.00.[19]

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[15] Appellant argues that "the allegations under the sections discussed here are crimes and as such should have to be proven beyond a reasonable doubt." Appellant's Memorandum at 12. Rhode Island case law is squarely in opposition: "[c]ontrary to petitioner's contention it was not incumbent upon the administrator to find the licensee guilty beyond all reasonable doubt." *Scialo*, id. at 141.

[16] It is the attempt to engage that must be for the "purpose" of prostitution, not the original reason for being in the place where the alleged stands. In uttering words of sexual offer, the purpose is clearly for prostitution, despite any argument that their primary "purpose at the establishment was as entertainers only." Appellant's Memorandum at 8.

[17] Board Transcript at 50.

[18] Id. at 52.

[19] Id.

While also acting as an undercover officer in the Appellant's establishment, Detective David Schiavulli, Jr. was approached by female dancer identifying herself as "Caramel." Like Potter, "Caramel" offered Schiavulli a "lap dance" for $ 25.00 per song.[20] She brought him to a private booth in which the "lap dance" was performed (hereinafter referred to as the "lap dance booth"). Schiavulli testified: "the conversation then came up if I wanted to stay for another lap dance or if I wanted to go into the back for a more private lap dance. She then told me it was going to be $ 150 to go into the other room and pointed in the back of where I was sitting. At that point she told me we would have a little more fun in there. She would perform oral and manual stimulation on me for $ 150."[21] Specifically, Schiavulli testified before the undersigned that she offered to "jerk me off and blow me." "Caramel" testified that the room in the back being referenced was the "Champagne Room." The pictorial exhibits entered by the Appellant show that the "Champagne Room" is a private room with curtains and a small pole-dancing area and bottles of Champagne, in contrast to the "private booth" which is only a small stall with a curtain.

However, "Caramel" testified before the undersigned that she did not offer manual or oral stimulation. Instead, her account indicates that she made a comment to the effect that she and Schiavulli could have some "fun" if he paid for a 15 minute dance in the "Champagne Room." She opined that Schiavulli must have assumed she meant sexual acts by those words but that she did not.

The undersigned Hearing Officer has carefully reviewed the testimony of both Detective Schiavulli and "Caramel" as they appeared before the undersigned. In resolving the conflict in the testimony between the two accounts of the words uttered about the Champagne Room offer

[20] Board Transcript at 20.
[21] Id. at 22

during the dance, the undersigned finds Detective Schiavulli to be more credible. He has been an officer at the Providence Police Department for twelve years, eight in the Narcotics and Organized Crime Bureau and his tone, mannerisms, and body language indicate a more truthful testimony that that of "Caramel."[22] In contrast, "Caramel" had more motive to fabricate her testimony and she contradicted her own testimony on cross-examination pertaining to the entertainment issues presented. She testified at one point that she did not remember whether or not she "flashed" her bare breasts to the officer, but at another point she testified that she did flash the officer but that this was the only time she has ever flashed anyone.

Furthermore, the key testimony regarding the offer of oral and manual stimulation is corroborated by the police report that was prepared immediately after the incident. The record also indicates that "Caramel" chose a "filing" for the criminal charges, rather than fighting for an acquittal. In *Scialo*, the R.I. Supreme Court upheld the decision of the administrator affirming a two week suspension upon finding that "petitioner had permitted gambling on the licensed premises" where the facts of the case indicate that the petitioner had pleaded *nolo contendere* to the police charge that he had permitted gambling on the premises. 99 R.I. at 739.

The Appellant attacks Schiavulli and Potter's credibility on the basis that it is not clear who prepared the police report and that it excludes some of the details of the incidences. Appellant's Memorandum at 9-10. Under "Case Details" it appears that Schiavulli is listed as the "Reporting Officer," but testified before the Board that Potter prepared the Report.[23] In closing before the Board, counsel for the City of Providence explained "there is some confusion on who wrote the report, but I think that speaks…their recollection of that aspect of it;" "[t]hese police officers do so many reports that there could be some confusion on who wrote what

[22] Board Transcript at 13.
[23] There is both a "NOC Report" section and a "NOC Supplement" so one possible explanation could be that one officer wrote the report and one wrote the supplement.

when."[24] But, "[t]hey were clear on what happened on October 11, 2014."[25] While it is true that some details elicited during testimony were not included in the report, the officers were consistent in their testimony before the Board and the Department both in direct and throughout cross-examination in all aspects of the incident other than the post-incident report drafting.

Appellant also states that the detectives testified that there was a hook in the booth in which their private dances occurred but that "the photos in evidence show no indication of any hooks." Appellant's Memorandum at 10. However, the pictorial exhibits presented only show six of the booths, two of them numbered six and seven. Three of pictured booths have what could be white hooks inside of them. Shiavulli could not recall which of the booths his two dances occurred in and Potter was not questioned using this exhibits. Thus, the pictures do not discredit these witnesses with respect to their testimony about hooks in the booth.

The Appellant further argues that the solicitation is unlikely because the "Champagne Room" is not well closed off; however, the photos indicate that there are curtains that would provide an area in which sexual activity could occur. Appellant's Memorandum at 8. The testimony of the "house mom" was that she has observed prostitution occurring inside of the club in the past.[26] So the violation in this instance is very much possible despite the notion that the Champagne Room may not be the ideal place of privacy. The Appellant also argues that "Caramel" would not have engaged in solicitation because she knew the Appellant forbade solicitation and would fire her for so engaging. However, she also knew that bearing her breasts was forbidden but testified that she did so.

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[24] Board Transcript at 122. This contraction is must less concerning than the material contradiction in "Caramel's" testimony as to whether or not she exposed her bare breasts to Detective Schiavulli.
[25] Id.
[26] Board Transcript at 84, 97.

The Appellant also defends that "Caramel" is not an employee, but an independent contractor. This distinction is not material, however, because licensees must prevent all violations of law inside the premises, whether the actor is an owner, employee, independent contractor, or a patron. That being it said, the citations in the Board's Memorandum to cases in other jurisdictions characterizing exotic dancers as employees rather than independent contractors shows the employer should be held *more* responsible over the control of such employees.[27] The payment of portion of earnings to the club and the written policies directing the employees conduct above and beyond those rules required to achieve compliance with the law evidence an employment relationship. "Caramel" also testified that she subjectively believed she was an employee.

It is true that these violations are evidenced only by the testimony of the officers as to what the dancers said to them. Such evidence is "legally competent," against the "hearsay" objections raised by the Appellant. Even if the testimony was hearsay, "[b]oth the United States Supreme Court and [the Rhode Island Supreme Court] have stated directly that hearsay evidence is admissible in administrative proceedings." *DePasquale v. Harrington,* 599 A.2d 314, 316

[27] *Harrell v. Diamond A Entm't, Inc.*, 992 F. Supp. 1343, 1347-48, 1350 (M.D. Fla. 1997)(in determining that dancer was an employee within the meaning of the Fair Labor Standards Act, considering that "all dancers were required to abide by written rules and regulations which were incorporated by reference in the license agreement," including "a rule requiring the dancer to not permit any customer to touch her 'private parts;'" "[a]rrangements factually similar to the one in this case have been tested by federal courts in Texas, Indiana and Colorado" and "[w]ithout exception, these courts have found an employment relationship."); *Clincy v. Galardi S. Enterprises, Inc.*, 808 F. Supp. 2d 1326, 1340 (N.D. Ga. 2011)(finding employment relationship under the FLSA, considering that "at the end of the night entertainers pay a portion of the money they received that night to the DJ, who in turn submits 40% of that money to Club management, who in turn submits 50% of the funds received from the DJ directly to either one of the corporate Defendants."); *Hart v. Rick's Cabaret Int'l, Inc.*, 09 CIV. 3043 PAE, 2013 WL 4822199 (S.D.N.Y. Sept. 10, 2013), reconsideration denied (Nov. 18, 2013)(concluding that a "clear majority of cases have found exotic dancers to be employees under the FLSA" after citing opinions from the 5th Circuit Court of Appeals and federal courts of Alaska, Georgia, District of Columbia, Indiana, Texas, and Michigan and only two cases finding the opposite in Oregon and Arkansas; in concluding the same, considering that "[t]he Guidelines regulated almost every aspect of the dancers' behavior within the Club.")

(R.I. 1999).[28] However, this testimony is not hearsay because the words at issue are "verbal acts." "Hearsay" is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." R.I. R. Evid. 801(c). When the words themselves constitute a crime or offense, they are not being offered to show the truth of the matter asserted. 29 Am. Jur. 2d Evidence § 675 ("There is a category of nonhearsay designated as verbal acts or verbal conduct in which the utterance of the words is, in itself, an operative fact which gives rise to legal consequences"). Here, the words themselves constitute the act of solicitation for prostitution and are not hearsay. "Statements that comprise a solicitation of a sexual act, including any negotiations regarding the price or services, are 'verbal acts' that have legal significance either by themselves or together with the nonverbal conduct that they accompany and explain." *Com. v. Purdy*, 459 Mass. 442, 452-53, 945 N.E.2d 372, 382-83 (2011). Therefore, words of solicitation do not even fall within the definition of "hearsay." Id.[29, 30]

Where it has been established that the Appellant failed to discharge the duty to prevent conduct constituting a violation of law, disciplinary action is appropriate even though the Appellant stresses that it "took substantial measures to avoid any violations of state laws." Appellant's Memorandum at 2. In *Balch v. Pastore*, the Rhode Island Superior Court concluded that "the licensee failed to discharge that duty" despite the petitioners emphasis on "the manner

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[28] Citing *DePasquale*, the Rhode Island Superior Court has upheld the Department' reliance on statements made to police regarding fighting inside of a liquor establishment in investigation of injuries occurring therein. *Chapman Street Realty v. Department of Business Regulation*, 2002 WL 33957092 (R.I. Super. 2002).

[29] *See also State v. Quitevis*, W3/94-0059, 1994 WL 930990 (R.I. Super. Oct. 14, 1994)(In a case involving a charge for the words "I'll blow you" accompanied by a groin-grab, recognizing "[i]n most cases prostitution involves the spoken word, for one must communicate a message to another").

[30] The Appellant also cites the Confrontation Clause of the federal and state constitutions as prohibiting hearsay evidence in this case. However, it is clear that those provisions only apply in criminal cases. *State v. Clark*, 974 A.2d 558, 575 (R.I. 2009)("The Confrontation Clause of the Sixth Amendment to the United States Constitution guarantees a criminal defendant the right 'to be confronted with the witnesses against him.' This constitutional safeguard also is embodied in the Declaration of Rights of the Rhode Island Constitution, article 1, section 10, which provides that 'in all criminal prosecutions, accused persons shall enjoy the right to be confronted with the witnesses against them.'")(emphasis supplied).

in which his employees cooperated with police on each of the occasions in question as well as the efforts they made to properly supervise the licensed premises." C.A. 793198, 1983 WL 486780 (R.I. Super. Aug. 15, 1983). Therefore, the documents and testimony presented to the Board showing policies and procedures designed to prohibit solicitation do not negate the finding of breach of the "onerous" duty to prevent violations from occurring on the premises.[31]

Although the evidence discussed established that the Appellant permitted two violations of § 11-34.1-4 to occur on the premises in violation § 3-5-23, it was not established that the Appellant *knowingly* permitted the violation to occur as required under § 11-34.1-7. R.I. Gen. Laws § 11-34.1-7(b) provides: "It shall be unlawful for any person to knowingly permit, allow, transport or offer or agree to receive any person into any place, structure, house, building, room, or business for the purpose of committing any commercial sexual activity, or knowingly permit any person to remain in the premises for those purposes, or to, in any way, aid or abet or participate in any of the acts or things enumerated in this chapter." "[A]cting 'knowingly or intentionally' mean[s] that defendant must have acted deliberately or purposely and not by way of accident or innocent mistake." *State v. Sivo*, 925 A.2d 901, 914 (R.I. 2007)

The record shows that the lap dance booth was in the back of the establishment, up about two steps from the main level.[32] Schiavulli testified that the lap dance booth "had a curtain hanging, it was kind of knotted...so the bottom corners would hang...a little opening but the curtain covered most of the booth."[33] Before, during, and after the "lap dance" and the attendant

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[31] For example, the security personnel Employment Agreement requires the employee to acknowledge that it is the policy of the Club not to allow any "sexual activities between patrons and entertainers." The Floor man protocol provides: "Monitor private dance areas and the floor for any sexual activity. Again please let managers know when and if it's going on." Entertainers are required to sign a "Warning" that "[p]rostitution is illegal in Rhode Island and will NOT be tolerated in this club." A document appearing to be a list of club policies for entertainers provides: "Do not prostitute yourselves in or out of the club!!!"

[32] Board Transcript 15, 20

[33] Id. at 21

conversation, there were a "male and female sitting off to the right" [34] at a booth with a cash register (hereinafter referred to as the "cash register booth").[35] Schaivulli testified before the undersigned that he did not observe these persons monitoring the lap dance booths, such as by approaching and looking directly into the booth, which would have required moving the curtain off to the side. Schiavulli further testified before the undersigned that the way the curtained lap dance booth and cash register booth were situated, there was not a clear line of sight into the lap dance booth. While inside he could not see at eye level, so it appeared that persons outside could not fully see "what was going on" inside the booth behind the curtain. He testified that he would have known if someone came up to put their ear to the curtain because he could have observed their feet where the curtain was tied at the bottom. At the end of the dance, Schiavulli paid Caramel; she retained $5, with the remainder going to the man and woman seated at the both. Schiavulli testified that the female and/or male appeared to be marking the receipt of the money on a piece of paper,[36] but did not appear to reprimand or otherwise exchange conversation with "Caramel" at that time. Potter testified that "April" conversed with the female sitting at the cash register booth but not as to the nature of their conversation.[37] Shiavulli testified that there was a bartender on duty who may have been close enough to hear parts of their conversation;[38] however, he did not testify as to any observations of this individual either looking into the booth or reprimanding or conversing with "Caramel" after the dance. Detective Potter's testimony before the Board corroborates Shiavulli's testimony described in this paragraph in all material respects.[39]

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[34] Id. at 21, 23
[35] Id. at 40
[36] Id. at 40
[37] Id. at 54
[38] Id. at 18.
[39] Id. at 50-51, 53-55.

From this evidence, it does not appear that any employees other than the two female dancers themselves knew that solicitation for prostitution was occurring in these instances. It was not conclusively established that either the man or woman at the cash register booth or the bartender could see inside of the booth or hear the conversation occurring during the dance, with a curtain in the way and music playing. Therefore, no violation of § 11-34.1-7 occurred. To the contrary, at the Board hearing Louis Decosta testified before the Board that the staff "can't monitor a conversation;" "[i]ts impossible."[40]

To clarify, the fact that the Appellant did not "knowingly" permit the violation to occur does not absolve the Appellant of liability under § 3-5-23. "A liquor licensee under our law cannot close his eyes and block his ears to the happenings in and about his place of business and then claim immunity from local licensing board action by disclaiming knowledge of what has transpired." *McHale v. Sarkas*, 74-3081, 1975 WL 170001 (R.I. Super. Apr. 9, 1975). "Like the ostrich, a licensee may decide to stick his head into the sand, but he must realize that in so doing, a vulnerable portion of his plumage is still exposed and presents a rather large target for any arrows by a local licensing board." Id. Had the Appellant provided sufficient supervision of the dancers and took other precautionary measures, the Appellant could have learned of and prevented the violation. The fact that the Appellant did not exercise the requisite degree of vigilant supervision establishes a violation of § 3-5-23, regardless of the Appellant's lack of actual knowledge.

D. Review of Penalty

Having found that the Board established two violations of R.I. Gen. Laws § 3-5-23 by virtue of permitting violations of § 11-34.1-4 to occur on the premises, the analysis turns to the

[40] Id. at 104.

question of whether imposition of a twenty day suspension and $ 2,000 fine is appropriate.[41] "There are two components to an administrative decision – a determination of the merits of the case, and a determination of the sanction. While the former component is mainly factual, the latter involves not only an ascertainment of the factual circumstances, but also the application of administrative judgment and discretion." *Jake and Ella's, Inc. v. Department of Business Regulation*, 2002 WL 977812, *5 (R.I. Super., 2002).

Pursuant to R.I. Gen. Laws § 3-5-21(a), "[e]very license is subject to revocation or suspension and a licensee is subject to fine...for violation by the holder of the license of any rule or regulation applicable," including violation of R.I. Gen. Laws § 3-5-23. R.I. Gen. Laws § 3-5-21(b) limits fines to $500 for the first offense and $1,000 for each subsequent offense. It appears from the disciplinary history of the Appellant that this is the first violation of the liquor laws.[42] As such, the Board has the authority to impose a $500 fine for the first solicitation event and $1000 for the second. The $2,000 fine reached by the board for two counts of violating § 3-5-23 must be reduced to the limits on fines imposed by § 3-5-21(b). The Department has "[s]tatutory authority under § 3-5-21 to make meaningful independent assessments as the State's superlicensing body as to the appropriateness of any such fines." *Rack, Inc. v. Providence Board of Licenses*, 2013 WL 3865230 (R.I.Super.), 6. However, "DBR's implied jurisdiction to review administrative fines imposed by local boards pursuant to § 3-5-21 does not require the same level of fact-intensive reexamination of the issues." Id. at 7. The court explained that there is "no reason to hold that in administering appeals from local licensing board decisions that impose administrative fines on liquor licensees, the DBR must apply a *de novo* standard of review." Id.

[41] The remaining $2,000 of the fine was for "two counts of adult entertainment without a license." The Department did not assume jurisdiction to review that fine in this case.
[42] There is a total $750.00 fine for two counts of adult entertainment without a license on October 16, 2012.

at 7.[43] Accordingly, the Department, based on all the facts and circumstances discussed in this opinion, and without further findings, finds that the statutory maximum penalty is appropriate.

With respect to the twenty day suspension, the undersigned also finds that punishment to be reasonable. In determining the appropriate penalties, the Department may consider a variety of factors of "aggravation and mitigation." *Santos v. Smith*, 99 R.I. 430, 433 (R.I., 1965). For example, the Department may consider "the number and frequency of the violations, the real and/or potential danger to the public posed by the violation, the nature of any violations and sanctions previously imposed, and any other facts deemed relevant in fashioning an effective and appropriate sanction." *Jake and Ella's*, id. at 6. The Department may also consider is the *mens rea* of the Appellant's management. For example, the R.I. Superior Court has expressed "great reservations about the ...imposition of the most severe penalty allowed by law" (revocation), where there is "reason to believe the violation was more the result of negligence rather than malicious intent." *Musone v. Pawtucket Bd. of License Com'rs*, 1984 WL 560365, *2 (R.I. Super., 1984).

In *Scialo*, the Rhode Island Supreme Court upheld the decision of the liquor control administrator affirming the Providence Bureau of Licenses' imposition of a two week suspension "on a finding that petitioner had permitted gambling on the licensed premises." 99 R.I. 738 at 739. In *Chernov Enterprises, Inc. v. Sarkas*, the Court upheld the decision affirming the refusal to renew a liquor license upon evidence that the licensee "suborned perjury of two minors." 109 R.I. 283, 284 A.2d 61 (1971). Based on these two cases, the penalty appears to be reasonable because of the "real and/or potential danger to the public posed by the violation" and "other facts deemed relevant," *Jake and Ellas*, namely the indication of prior solicitation on the premises, the

[43] The court went as far as to say "[i]f the monetary fine imposed on a licensee by a local liquor licensing board is within the statewide limits set by statute, then such a finding by the DBR may be a sufficient basis for the DBR to dismiss the licensee's appeal, in the DBR's reasonable discretion." *Rack*, id. at 8.

use of private booths and rooms and an atmosphere that promotes sex-related offenses, and the ability to prevent violations from occurring.

First, while solicitation carries a criminal penalty of a sentence of up to six (6) months incarceration, a fine of $250-$1,000 or both. The severity of the sanction demonstrates the seriousness with which the General Assembly views the public health, safety and welfare risks of solicitation. Second, while the formal disciplinary history does not reflect any prior violations for permitting solicitation to occur on the premises, the "house mom" testified that she has observed prostitution occurring on the premises other than by "April" and "Caramel" and that two people were fired after the arrests of "April" and "Caramel" for that reason.[44] And the General Manager testified that they have fired people for suspicion of solicitation based on comments of long-time customers and employees.[45]

Third, the Board reasonably concluded that the Appellant "creat[ed] an area which is conducive to the occurrence of illegal activities," specifically sex-related illegalities. Board Decision at 2. A licensee can be held liable when the nature of the establishment has the effect of drawing in certain persons to an atmosphere that breeds unlawful activity inside the establishment. In *Cesaroni*, *supra*, liability was imposed when multiple witnesses testified that patrons inside the establishment were "boys dancing with boys, kissing, embracing; girls dancing with girls, kissing and embracing" and then "at and after the closing hour on Friday and Saturday nights patrons leave the premises and gather in the street, brawling and quarreling among themselves and using bad language." 98 R.I. 377, 382. The court reasoned that "the association of such people in the circumstances set the stage" for the disorderly conduct; the licensee's "acquiescence in the conduct of his patrons permitted the licensed premises to become attractive

[44] Board Transcript at 84, 97.
[45] Id. at 105.

as a gathering place for deviates of both sexes, a virtual house of assignation for perverts;" *i.e.*, he "induced these unfortunate people to flock to a place where they would be assured that their conduct would be tolerated." Id.

The instant case is one in which the association of exotic female dancers and persons seeking the company of such entertainment, in combination with the use of private booths and rooms, creates an atmosphere inside the establishment where solicitation may occur more frequently than in non-exotic entertainment establishments. In his closing argument before the Board, the Appellant acknowledges that the "setting...lends itself to the probability of these kinds of activities and words...[i]t does promote sexual activity."[46] In fact, the employee policies and training materials reflect that solicitation is a problem that is likely to be encountered at this establishment. *See* note 31. Importantly, the setup of private booths and a private Champagne Room, without an adequate degree of monitoring, facilitate the occurrence of such sexual activity. It also appears that the Appellant's policies may promote illegal sexual activity because entertainers are permitted to drink while working - alcohol impairs inhibitions in a manner that may make entertainers more likely to break the policy and law against solicitation.[47] The licensee will be held responsible to the extent that atmosphere of an exotic dancing establishment with insufficiently monitored private areas and workplace alcohol consumption has the effect of promoting sex-related illegal activity such as solicitation.

Fourth, the record reflects that the Appellant did have an alternative "lap dance" area arrangement that could have prevented these violations had it been maintained instead of installing the private lap dance booths and/or Champagne Room. In response to the question

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[46] Board Transcript at 119.

[47] A document that appears to be a list of policies states: "Do not get drunk at any time during your shift, if and when you are shut off it will not be up for discussion!" Another policy document states "Do not refuse a drink when a customer asks...Get a bottle of water or soda if you do not wish to consume alcohol."

"[i]f you know the probability of this stuff is going on, why do you have private booths;" the General Manager responded "[t]hey went in when I left [referencing an earlier disclosed one and a half year hiatas], to be honest with you;" "we used to have just one big couch that kind of looked like your table, and I loved it; [i]t was perfect."[48] Moreover, it should be noted that this is a small establishment[49] that would not have been that burdensome to monitor more carefully to avoid violations of law. The pictorial exhibits show a small number of booths (at least seven) and a single "Champagne" private room. The record indicates that there were only about 8-12 of female dancers working on the night in question. [50] It was clearly feasible for the Appellant to either remove the private booths and Champagne room for a more open configuration or periodically "check on" each and every booth to deter and detect any violations of law.

RECOMMENDATION

It is recommended that the Director order as follows:

The Board established that the Appellant violated R.I. Gen. Laws § 3-5-23 two times by permitting two violations of § 11-34.1-4 to occur on the premises. As a penalty, the Board's fine of $2,000 is reduced to $1500 to comply with the statutory limits as set-forth in this Decision. Further, a twenty (20) day suspension of the liquor license, which has already been served, is appropriate.

Date: 3/18/2014

Louis A. DeQuattro, Jr., Esq., CPA
Hearing Officer
Deputy Director & Executive Counsel

[48] Id. at 111.
[49] The following exchange occurred on cross-examination at the Board hearing: "This is a small club, isn't it? "Yeah it's not a very big club." Id. at 42.
[50] Id. at 31 (Shiavulli), 49 (Potter).

ORDER

I have read the Hearing Officer's recommendation and I hereby (check one)

- ☑ Adopt
- ☐ Reject
- ☐ Modify

the recommendation of the Hearing Officer in the above-entitled Decision and Order.

Date: 19 March 2014

Paul McGreevy
Director

Entered as an Administrative Order No.: 14-12 this 19th day of March, 2014.

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 19th day of March, 2014 that a copy of the within Decision and Order and Notice of Appellate Rights was sent by e-mail and first class mail, postage prepaid to -

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