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

Davinci Lounge and Restaurant Inc. and Davinci Cigar Bar, Inc. Appellants,	:	
v.	:	**DBR No. 19LQ004**
City of Providence, Board of Licenses, Appellee.	:	

DECISION

I. INTRODUCTION

On or about January 31, 2019, the City of Providence, Board of Licenses ("Board") imposed a total of $2,750 in administrative penalties, a 60 day suspension of the Class BV liquor license, reduction of hours to midnight, and revocation of the BVX (extended hours) liquor license on the Appellants' Class BVX liquor licenses.[1] In addition, the Board ordered Romeo Rouhana[2] to be divested from any form of ownership, employment, or managerial relationship for either licensee and imposed a lifetime ban from holding liquor licenses within the City of Providence. Pursuant to R.I. Gen. Laws § 3-7-21 and R.I. Gen. Laws § 3-5-21, the Appellant appealed the Board's decision to the Director of the Department of Business Regulation ("Department"). The undersigned was designated by the Director of the Department to hear the appeal. The Appellants filed a motion to

[1] At the Board hearing, the Board also suspended the Appellants' other City licenses, but the Department does not have jurisdiction over those licenses. Appeals to the Department can only relate to the liquor license held by the Appellants. See *El Nido v. Goldstein*, 626 A.2d 239 (R.I. 1993) (victualing license is a separate and distinct license from a liquor license).

[2] During the course of this decision, reference is made to Romeo Rouhana and his brother, Joe Rouhana. For ease of reference, they will be referred to by their first names. No disrespect is intended.

stay to which the Board objected and an order on said motion was issued by the Department on February 6, 2018. The appeal hearing was held on March 1, 2019. The parties were represented by counsel who rested on the record.[3]

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 3-5-1 *et seq.*, R. I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

III. ISSUES

Whether the Appellants engaged in the violations as found by the Board, and if so, what are the appropriate penalties.

IV. MATERIAL FACTS AND TESTIMONY

The two (2) liquor licensees that filed the appeal are located in the same building: the cigar bar is upstairs and the restaurant downstairs. They both have the same owners. The testimony from the Board's hearing is summarized below. See City's Exhibit One (1) (certified record).

April 21, 2018

Officer Brendan McKenna, Providence Police Department ("PPD"), testified on behalf of the City. He testified that he responded to the Appellants at about 2:30 a.m. and there was a large crowd of people outside arguing and that patrons were exiting the Appellants and getting into their cars valeted by the Appellants. He testified there were people inside and a patron was sick. On cross-examination, he testified that he read the police report before testifying.

Officer Diana Johnson, PPD, testified on behalf of the City. She testified that she responded to the Appellants and when she arrived, there were people outside waiting for their cars

[3] The undersigned received the transcript of hearing on March 13, 2019.

and yelling about it and also fighting, and the Appellants' security was trying to break up the fight. On cross-examination, she testified that she read the police report before testifying.

April 29, 2018

Detective Dereck Shields ("Shields"), PPD, testified on behalf of the City. He testified that he responded to the Appellants that night and from the outside he could hear a loud singer. He testified inside on the first floor, he observed someone singing from an amplified microphone and someone was playing an amplified keyboard. See City's Exhibit One (1) (certified record - City's Exhibit One (1) 4/29/18 - photograph of performers). He testified that he saw patrons smoking hookahs on the first floor. He testified that he saw charcoal embers and patrons were inhaling and exhaling smoke. On cross-examination, he testified that he asked for a container of "shisha" (what was in the hookah) and it contained "molasses" (the non-tobacco part of what is put in hookah).

Shields testified that he went upstairs and on the back bar, there was an ice bucket with a bottle of Hennessey and a bottle of Malibu rum in reach of the patrons. He testified that he believed the bottles were open and the clear bottle was half empty. He testified that he took samples from the bottles and had them tested by the State laboratory. *Id.* (City's Exhibits Two (2) to (5) 4/29/18 - photographs of the bottles - and Six (6) 4/29/19 (toxicology report showing alcohol)). On cross-examination, he testified that he saw two (2) bottles in a bucket on a bar.

June 8, 2018

The underage violation was agreed to for the cigar bar.

December 1, 2018

Detective Scott Petrocchi ("Petrocchi"), PPD, testified that he responded to a call about overcapacity and when he arrived he saw a D.J. on the first floor and took a photograph. *Id.* (City's Exhibit One (1) 12/1/18 - photograph). There was no cross-examination.

Shields testified that he responded to an overcapacity call and when he arrived he spoke to a bouncer who told him the place was overcapacity and when he, the bouncer, spoke to the owner, the owner did not care. He testified that the bouncer showed him the clicker with 361 on it. *Id.* (City's Exhibit Two (2) 12/1/18 – photograph). He testified that the capacity is posted in the common hallway for the two (2) locations. He testified that he went upstairs and there were two (2) D.J.'s using electronic equipment and there was a large crowd that was hard to walk through. He testified that the upstairs capacity is 149 without tables and chairs and 98 with tables and chairs and that there were tables and chairs upstairs that night. *Id.* (City's Exhibits Three (3) – photograph of capacity poster; Four (4) and Five (5) photographs of upstairs D.J.). On cross-examination, he testified the bouncer gave him the clicker and left, and he did not get his name.

Louis Carabello testified on behalf of the Board. He testified that he was working security that night and was upstairs with the clicker to ensure the Appellants stayed at capacity as there had been previous problems. He testified that the upstairs had 300 patrons and it was crowded and the waiters could not walk by and there are hookahs upstairs so he told the manager, Joe,[4] who said there were no issues and told him to leave. He testified that the number on the exit clicker was about 50. On cross-examination, he testified that he took the exit clicker with him when he was kicked out by the manager.

December 23, 2018

Petrocchi, PPD, testified on behalf of the Board. He responded to the Appellants that night and he saw a singer and D.J. through the downstairs window. He testified that he went upstairs and it was very crowded and he had to push his way through the crowd and there was a D.J. He testified that he took a photograph of the upstairs D.J. but not the downstairs D.J. *Id.* (City's

[4] This is Joe Rouhana.

Exhibit One (1) 12/21/18 - photograph of D.J.). He testified that he went downstairs to speak to management and spoke to Romeo and told him about the violations. He testified that while speaking to Romeo, Romeo said "I'm sorry. I apologize," and shook his hand. He testified that as Romeo shook his hand, Romeo gave him money including at least two (2) hundred-dollar bills. He testified that he handed it back and said he could not take it and Romeo kept trying to give it to him and said, "it's Christmas" so he left. He testified that he has spoken to Romeo before and Romeo knew he was a police officer. He testified that he spoke to his supervisor and Romeo was arrested and the Appellants' video equipment was seized. The video was played at the Board hearing. Petrocchi testified that the video showed the front common lobby area and his back is to the camera and he is speaking to Romeo and next to Romeo is a manager/owner that he knows as Joe. He testified that Romeo gave him the money as he shook his hand, and he returned the money.

On cross-examination, Petrocchi testified that he had spoken to Romeo before. He testified that Romeo apologized as he handed him the money. He testified that Romeo was not arrested right away, but that he spoke to his supervisor. On re-direct examination, he testified that Romeo never had offered him cash before. He testified that Romeo proffered the cash when they were speaking about the violations.

A review of the video shows Petrocchi walked into the foyer and his back was to the camera but it can be seen that there was nothing in his hands prior to speaking to Romeo Rouhana. At about five (5) seconds, Petrocchi is speaking to the man identified as Romeo Rouhana. At 19 to 22 seconds, Romeo shakes Petrocchi's hand and then uses his second hand to clasp Petrocchi's hand. At 34 to 37 seconds, Petrocchi hands back to Romeo what looks like rolled up money. Joe Rouhana is in the foyer; though, his back is to them at some points and he does not participate in their conversation. *Id.* (City's Exhibit Three (3) 12/23/18).

The Board issued a subpoena for Romeo to testify but his counsel said that he would not testify before the Board. *Id.* (January 14, 2019 Board transcript at pp. 103-104).

At the Department hearing, Joe Rouhana testified on behalf of the Appellants. He testified that he is one of the owners and managers of the Appellants. He testified that he was present on December 1, 2018. He testified that the bouncer told him the upstairs was overcapacity but refused to show him the clicker for exiting the building. He testified that bouncer left and took the exit clicker with him. He testified that the security agency that provided that bouncer fired the bouncer.

On cross-examination, Joe testified that he always knows his capacity and he never lets it go over 110 for the two (2) floors. He testified that on December 1, 2018, he walked around counting people during the night. He testified that there was not a D.J. on the second floor that night but when shown the photograph of the D.J., he testified that there was a D.J. He testified that he has incidental entertainment which does not include a D.J. but one must have been there that night for a special event. He testified he counted 75 patrons. He testified that on December 23, 2018, there was a singer but no D.J.s but when shown a photograph of a D.J. from that night, he testified that the D.J. must have been there for a special event. He testified that the first floor is not a cigar bar but has smoke eaters. He was asked if he witnessed the exchange between his brother and the detective and his counsel instructed him not to answer. On re-direct, he testified that the hookahs used downstairs burn molasses and not tobacco. He testified that the molasses is put on top of the pipe and coal is on top of the molasses and as the person draws, the smoke purifies the water and comes back through the hose. He testified the person draws smoke through the tube.

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

After the end of prohibition of liquor within the United States, Rhode Island implemented a new system of statewide control of liquor coupled with local authority to grant certain licenses. See P.L. 1933 ch. 2013. The intent of the new system was to eliminate the old unsupervised system of local regulation that resulted in a lack of uniformity and grave abuses that seriously affected the public welfare and instead vested broad powers of control and supervision in a state system. *Baginski v. Alcoholic Beverage Commission*, 4 A.2d 265 (R.I. 1939).[5]

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[5] *Baginski*, at 266-267, found as follows:

> Chapter 2013 is a familiar and well-recognized example of the legitimate exercise of the police power. *Tisdall v. Board of Aldermen*, 57 R.I. 96, 188 A. 648. The act is entitled an act to promote temperance and to control the manufacture, transportation, possession and sale of alcoholic beverages.

In keeping with the Department's statewide oversight and mandate to "establish a uniformity of administration of the law for purpose of promoting temperance throughout the state," the Department has broad statutory authority to review liquor appeals. *Baginski,* at 268. See also *Tedford et al. v. Reynolds*, 141 A.2d 264 (R.I. 1958). *Baginski* held that since the Department[6] is a "superlicensing board," it has the discretion to hear cases "*de novo* either in whole or in part." *Baginski*, at 268. Thus, an appeal may hear new testimony in part and/or may rely on the hearing before the local licensing authority. However, as the review is *de novo* the parties start afresh during the appeal but the Department has the discretion to review the local authority partially *de novo* and partially appellate as seen fit. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Since the Department is charged with ensuring statewide uniformity, it follows that the statutory scheme grants the Department the authority to revise or alter decisions of local boards. *Id.* Further, since the liquor appeal hearing is a *de novo* hearing rather than an appellate review of what occurred at the municipal level, any alleged error of law or fact committed by the municipal agency is of no consequence. *Id.* See also *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964) (Department's jurisdiction is *de novo* and the Department independently exercises the licensing function).

In this matter, there was a *de novo* hearing on the suspension and revocation. The outcome of an appeal is a decision whether to uphold, overturn, or modify a licensing board's decision.

> Its chief purpose may, without question, be said to be the safeguarding of the public health, safety and morals. *Clark v. Alcoholic Beverage Commission,* 54 R.I. 126, 170 A. 79.
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> *** Where, before, the emphasis was exclusively on control locally, now it is predominantly on state control. This is evident in many sections of the act. Running through the entire act is the central idea that the traffic in intoxicating liquors is a problem that is state-wide; and correspondingly, that state supervision and control, either originally in some phases or ultimately in others, alone can adequately cope with it. However, along with the incorporation into the law of this new idea, there has been retained a remnant of local administration. An example of this is the right of local boards to grant and to revoke, at least in the first instance, class C licenses. Such licenses correspond to the retail licenses, popularly known as saloon licenses under the old law.

[6] At that time the alcoholic beverage commission.

Thus, this appeal is not bound by the Board's reasons for suspension or revocation but whether the Board presented its case for revocation or suspension before the undersigned. The undersigned will make her findings on the basis of the evidence before her and determine whether that evidence justifies said revocation and the penalty.

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

In order to impose discipline, cause must be found. R.I. Gen. Laws § 3-7-6 provides that applications for retail liquor licenses may be denied for cause. *Chernov Enterprises, Inc. v. Sarkas*,

109 R.I. 283 (1971) found that cause shall mean, "we have said that a *cause*, to justify action, must be *legally sufficient*, that is to say, it must be bottomed upon substantial grounds and be established by legally competent evidence." *Id.* at 287 (italics in original).

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

Most appeals to the Department are made pursuant to R.I. Gen. Laws § 3-7-21, but under that statute, the Department does not have authority to hear appeals of fines. However, the Superior Court found 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,* 2013 WL 3865230 (R.I.Super.). The Court found that the Department does not have to apply a *de novo* standard of review to appeals of administrative fines but that it 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.

C. Relevant Statutes

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

> (b) If any licensed person permits the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood . . . he or she may be summoned before the board, body, or official which issued his or her license and before the department, when he or she and the witnesses for and against him or her may be heard. If it appears to the satisfaction of the board, body, or official hearing the charges that the licensee has violated any of the provisions of this title or has permitted any of the things listed in this section, then the board, body, or official may suspend or revoke the license or enter another order.

R.I. Gen. Laws § 3-5-21 provides 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:
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> (1) Breach by the holder of the license of the conditions on which it was issued; or
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> (2) Violation by the holder of the license of any rule or regulation applicable; or
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> ***
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> (4) Breach of any provisions of this chapter.

D. Arguments

The Appellants argued the sanctions are too high and that the overcapacity charge is based on the evidence of a bouncer who walked off with the exit clicker and was fired and then testified against the Appellants. The Appellants argued that the sanctions imposed on Romeo Rouhana are beyond the Board's authority.

The Board argued that there are five (5) different dates with various violations that justified the penalties imposed. The Board argued that by a preponderance of evidence Romeo tried to bribe the detective and this is an administrative hearing and not a criminal matter.

E. Whether There Were Violations

April 21, 2018

Rule 18 of Department's *Liquor Control Administration* regulation ("LCA Regulation")[7] [8] governs the hours of operation for a Class BVX licensee. The evidence was that there were patrons on the premises at 2:30 a.m. in violation of said rule. There was evidence that people leaving the Appellants had caused a crowd and disturbance outside. The Board found the violations for both licensees and there was no evidence otherwise. Based on the foregoing, the Appellants violated R.I. Gen. Laws § 3-5-23 (disorderly conduct) and R.I. Gen. Laws § 3-5-21 by violating Rule 18 of the LCA Regulation since conditions of licensing include complying with statutory and regulatory requirements.

April 29, 2018

R.I. Gen. Laws § 23-20.10-3 prohibits smoking in public places. Smoking is defined in R.I. Gen. Laws § 23-20.10-2 as follows:

> (19) "Smoking" or "smoke" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, weed, plant, other tobacco product or plant product, or other combustible substance in any manner or in any form intended for inhalation in any manner or form. "Smoking" or "smoke" also includes the use of electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery system products, or other similar products that rely on vaporization or aerosolization; provided, however, that smoking shall not include burning during a religious ceremony.

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[7] Pursuant to the recodification of regulations required by R.I. Gen. Laws § 42-35-5, this regulation has been recodified as 230-RICR-30-10-1 effective May 22, 2018.

[8] Rule 18 of the LCA Regulation provides in part as follows:

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

The evidence at the Board hearing related to whether there was smoking downstairs. The upstairs is a smoking bar.[9] The Appellants argued that what was being smoked downstairs was just the "molasses" portion of hookah and did not include any tobacco. However, the statute defines smoking to include inhaling, exhaling, or burning a combustible substance in any manner or any form intended for inhalation. The evidence showed that patrons were inhaling and exhaling a substance intended for inhalation. A liquor licensee's compliance with the public smoking prohibition is a condition of licensing unless exempted as a smoking bar. Based on the foregoing, the restaurant violated R.I. Gen. Laws § 3-5-21 by allowing a public smoking violation.

R.I. Gen. Laws § 5-22-1.1[10] governs live entertainment in the City. Section 14-193 of the Providence City Code provides that "[n]o person, corporation or entity shall publicly or for pay, or for any profit or advantage, exhibit, promote, take part in, conduct, engage in or give any 'entertainment event' without an entertainment license from the board of licenses."

The evidence was that the downstairs restaurant had an amplified singer and keyboardist. Based on the foregoing, the restaurant violated R.I. Gen. Laws § 3-5-21 by having entertainment without a license.[11]

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[9] R.I. Gen. Laws § 23-20.10-6 excludes from the prohibition on public smoking, any "smoking bar" as defined by R.I. Gen. Laws § 23-20-10(15). See *ATO, Inc. d/b/a Skarr Lounge v. City of Providence, Board of Licenses*, DBR Nos.: 14LQ0014; -031; -051; 12LQ0076 (3/24/15) for an extensive discussion on the "smoking bar" statutes and regulations such as the affidavits to be filed with the Division of Taxation and the standards set by the Department of Health.

[10] R.I. Gen. Laws § 5-22-1.1 provides in part as follows:

> Live entertainment – City of Providence. The board of licenses for the city of Providence is authorized to license, regulate, or prohibit "live entertainment" in the city of Providence, including, but not limited to, live performances of music or sound by individuals, bands, musicians, disc jockeys, dancing, or karaoke, with or without charge, provided that "incidental entertainment" be permitted as of right, and no license shall be required. "Incidental entertainment" means background music provided at a restaurant, bar, nightclub, supper club, or similar establishment, limited to the following format:
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> (1) Live music performance limited to no more than a maximum of three (3) acoustic instruments that shall not be amplified by any means, electronic or otherwise.
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[11] It should be noted that the Board's decision makes the finding for the smoking violation and entertainment without a license for both Appellants; however, there was no evidence regarding upstairs entertainment and the upstairs is a smoking bar. No evidence was presented that the upstairs is not a smoking bar. See *ATO, Inc. d/b/a Skarr.*

Pursuant to R.I. Gen. Laws § 3-7-26, R.I. Gen. Laws § 3-8-14, and Rule 1.4.11 of the LCA Regulation[12] bottle service (except for wine and aquardiente) is not allowed. See *City of Providence Bd. of Licenses v. Dep't. of Bus. Regulation*, 2013 R.I. Super. LEXIS 195 (bottle service not allowed). Rule 38 of the LCA Regulation[13] provides that evidence of possession of unauthorized beverages is presumptive evidence of a sale.

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[12] R.I. Gen. Laws § 3-7-26 provides in part as follows:

> Certain practices prohibited.
> (a) No licensee, employee or agent of any licensee who operates under a license to sell alcoholic beverages shall:
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> (c) Nothing in this section shall be construed to prohibit a licensee from offering free food or entertainment at any time; or to prohibit licensees from including an alcoholic beverage as part of a meal package; or to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals or to more than one person; or to prohibit free wine tastings. Except as otherwise limited by this section, nothing contained in this section shall limit or may restrict the price which may be charged by any licensee for any size alcoholic beverage to be consumed on the licensed premises.
> (d) Adherence to this section is deemed to be a condition attached to the issuance and/or continuation of every license to sell alcoholic beverages for consumption on the licensed premises, and this section shall be enforced by the applicable local licensing authority, its agents, and the department.
> (e) The provisions of this section are deemed to be severable and any final decision by a court of competent jurisdiction holding that any provision of this section is void, shall not make void nor affect any of the remaining provisions of this section.

R.I. Gen. Laws § 3-8-14 provides as follows:

> Sale of beverages by bottle. The department of business regulation shall adopt rules and regulations authorizing the holders of Class B-V licenses issued pursuant to this title to sell aquardiente by the bottle, for consumption on the premises of the license holder because this beverage is generally purchased by the bottle by ethnic tradition.

Rule 1.4.11 of LCA Regulation provides as follows:

> Dispensing Alcoholic Beverages – Retail
> Except Class B-H alcoholic beverage licensees, all alcoholic beverages must be served, dispensed or sold by an employee or owner of a licensed retail liquor establishment. Alcoholic beverages may not be served or dispensed by a patron, provided however, hotel service "mini bars" shall be permitted if said hotel holds a valid B-H alcoholic beverage license, but said "mini bars" shall only be allowed in the room of a registered hotel guest who is at least twenty one (21) years of age.

[13] Rule 38 of LCA Regulation provides as follows:

> Unlawful Beverages – Retail.
> Possession of unauthorized alcoholic beverages in a licensed premises by the licensee or any of his employees shall be presumptive evidence that said beverages are for sale by the licensee and may result in suspension or revocation of the license.

The evidence shows that there was an ice bucket of alcohol bottles on the bar at the cigar bar in reach of patrons and one bottle was half empty. Possession of unauthorized bottles is presumptive evidence that they were offered for sale. Based on the foregoing, the cigar bar violated R.I. Gen. 3-5-21 by violating R.I. Gen. Laws § 3-7-26 and Rule 1.4.11 of the LCA Regulation.

June 8, 2018

At the Department hearing, the Appellants stipulated to the cigar bar's violation of R.I. Gen. Laws § 3-5-21 by allowing underage service.

December 1, 2018

The photographic and oral testimony was uncontroverted that there was entertainment without a license for both the upstairs and downstairs. Based on the foregoing, the Appellants violated R.I. Gen. Laws § 3-5-21 by allowing entertainment without a license.

While the Board found an overcapacity violation against both licensees, the evidence only was about the upstairs cigar bar. The Appellants challenged the bouncer who had taken the exit clicker home with him so there was no exit clicker to corroborate his testimony that 50 patrons exited. However, the clicker given the police for entering patrons showed 361 patrons. Even accepting Joe's testimony of counting the upstairs patrons to be 75, the upstairs would have been overcapacity since capacity upstairs with tables and chairs is 98. Based on the foregoing, the cigar bar violated R.I. Gen. Laws § 3-5-21 by being at overcapacity.

December 23, 2018

The photographic and oral testimony was uncontroverted that there was entertainment without a license for both the upstairs and downstairs. Based on the foregoing, the Appellants violated R.I. Gen. Laws § 3-5-21 by allowing entertainment without a license.

While the Board found overcapacity for both licenses, the only evidence was about the upstairs where the police officer testified that it was crowded. The police officer did not testify that he performed a count either while patrons were inside the club or at closing time. See *Secreto, LLC v. City of Providence, Board of Licenses*, DBR No.: 15LQ010 (8/11/15); and *J.H. Enterprises d/b/a The Rhino Bar and Grill v. Newport City Council*, DBR No.: 07-L-0185 (11/9/07). Based on the foregoing, there was not enough evidence to find that the Appellants were overcapacity.[14]

The video shows Romeo handed Petrocchi a wad of cash and Petrocchi returned it. Petrocchi testified that he told Romeo about the violations and Romeo gave him money asking him to forget about it and he, Petrocchi, returned the money. Apparently, Romeo has been arraigned on bribery but there have been no criminal charges.

The Board's administrative proceeding on whether these licenses should be suspended or revoked is a separate and distinct proceeding from any potential criminal proceeding even if the former is based on parallel facts from the latter.[15] Both types of proceedings have separate and distinct purposes. The purpose of any potential criminal proceeding is the punishment of the wrongdoer whereas the purpose of the appeal to the Department arises out of the local licensing authority and the Department's authority to protect the public by regulating liquor licensees.

Even if Romeo is never charged or if he charged and acquitted of the criminal charges, the Board could nevertheless seek revocation of the License, even if based on similar facts because

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[14] It should be noted that the police report for this date entered into exhibit at the Board hearing noted that approximately 300 to 400 people exited. However, the police report does not note whether an officer actually performed a count of the patrons exiting as in *Secretos* and no testimony was provided to the Board or Department regarding how that number was determined. See City's Exhibit One (1).

[15] R.I. Gen. Laws § 42-6-1 enumerates that "[a]ll the administrative powers and duties heretofore vested by law in the several state departments, boards, divisions, bureaus, commissions, and other agencies shall be vested in the following departments and other agencies which are specified in this title." The statute then includes the department of business regulation and the department of the attorney general as two (2) of the state departments vested by law with certain powers and duties.

there is no *res judicata* on the basis of the outcome of the criminal charges. Parallel proceedings are proper and constitutional. See *United States v. Kordel*, 397 U.S. 1 (1970).[16]

The United States Constitution's Fifth Amendment privilege against self-incrimination may be properly invoked in a civil proceeding regardless of whether there is a pending criminal matter arising out of the same set of factual circumstances. *Tona v. Evans*, 590 A.2d 873 (R.I. 1991), citing *Kordel*, at 7-8. See also *Simeone v. Charron*, 762 A.2d 442 (R.I. 2000); and *Pulaski v. Pulaski*, 463 A.2d 151 (R.I. 1983). However, a negative inference may be drawn against a party who refuses to testify. *Baxter v. Palmigiano*, 425 U.S. 308 (1976). Furthermore, "an inference may be drawn against a party in a civil case who declines to answer questions or to testify in a civil case." *Pulawski v. Pulawski*, 463 A.2d 151, 156 (R.I. 1983). See also *Flint v. Mullen*, 499 F.2d 100 (1st Cir. 1974), *cert. den.* 419 U.S. 1026 (1974); and *Rhode Island v. Cardillo*, 592 F. Supp. 655 (R.I. 1984).

Here, Romeo did not testify at the Board hearing. While he did not appear and assert his Fifth Amendment rights, his counsel asserted he would not testify despite being subpoenaed. While Joe was in the foyer during the interaction between Romeo and Petrocchi, Joe testified at the Department hearing but did not answer any questions about that interaction. Thus, a negative inference may be drawn from Romeo and Joe's refusal to testify.[17]

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[16] For example, the Department recently sought to revoke a licensee's license based on similar facts on which she was acquitted of criminal charges. See *In the Matter of: Carol Comstock*, DBR No.: 15RA010 (1/23/18).

[17] The drawing of a negative inference from Romeo and Joe's failure to testify is also supported by the "Empty Chair Doctrine" which can be invoked in a civil matter but not in a criminal proceeding. *State v. Taylor*, 581 A.2d 1037 (R.I. 1990). It is a rule of jurisprudence that states that if a party in a contested legal proceeding fails to call a readily available witness who would normally be expected to testify to a material issue, the fact-finder may presume that if the witness did testify, the evidence would have been prejudicial to the party's cause. *Belanger v. Cross*, 488 A.2d 410 (R.I. 1985); and *Retirement Board of Employees' Retirement System v. DiPrete*, 845 A.2d 270 (R.I. 2004). See also *Benevides v. Canario*, 301 A.2d 75 (R.I. 1973) (doctrine is to be applied with caution so that as a condition precedent to its invocation there must be a showing of the missing witness's availability to the person who would be expected to produce the witness).

Romeo is the owner and manager for both licensees. Therefore, based on the foregoing, the Appellants violated R.I. Gen. Laws § 3-5-21 by engaging in activity to influence or persuade a law enforcement officer to disregard their violations in return for monetary gain.

F. When a Suspension or Revocation of License is Justified

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). In terms of disorderly conduct, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. *Cesaroni* at 295-296.[18] A liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali v. Smith*, 254 A.2d 766 (R.I. 1969). It is not a defense that a licensee is not aware of the violations or provided supervision to try to prevent violation. While such a responsibility may be onerous, a licensee is subject to such a burden by the legislature and accepted such conditions by becoming licensed. *Therault v. O'Dowd*, 223 A.2d 841 (R.I. 1966). See also *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*

[18] The Court found that "disorderly" as contemplated in the statute meant as follows:

> The word "disorderly" as used here contemplates conduct within premises where liquor is dispensed under a license that causes either directly or indirectly conditions in the neighborhood in annoyance of or disturbing to the residents thereof. *Id.* at 296.

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); and *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).

Thus, the Department will uphold a revocation where an incident is so egregious as to justify revocation without progressive discipline. However, the Department will decline to uphold a revocation where the violation is not so egregious or extreme and the local authority has not engaged in progressive discipline. *Infra.*

G. Administrative Penalties

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 offence 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 offence of a specific statutory or regulatory violation. This interpretation is supported by the fact that the statute provides for a clean slate for all offenses if the licensee has not had any offenses for three (3) years. In other words, the first offense of the liquor statute cannot be fined more than $500 with each subsequent offense of the liquor licensing law not being fined more than $1,000 but if the licensee has no offenses for three (3) years, the clock is re-set and any violation would be considered a first offense.

H. Prior Sanctions

The cigar bar license was subject to a $2,250 administrative penalty for violations occurring on November 27, 2016, January 12, 2017, and February 4, 2017. These violations were for three (3) counts of entertainment without a license and three (3) counts of sale/possession of alcohol by

underaged people. In addition, on June 7, 2018, the Board found an entertainment without a license violation for May 7, 2017 but imposed no penalty.

The restaurant license was subject to a $1,250 administrative penalty for violations occurring on November 27 and 29, 2016, December 1, 2016, and January 13, 2017. The violations were for three (3) counts of entertainment without a license, three (3) counts of sale of tobacco, and three (3) counts of permitting smoking in a public place. See City's Exhibit One (1). At hearing on May 31, 2018, the Board found that the Appellant had entertainment without a license on June 8, 2017 and July 4, 2017 but imposed no penalties.

At hearing on May 31, 2018, the Board imposed administrative penalties on the Appellants for various violations. On appeal, the Department imposed a $3,000 administrative penalty for three (3) violations: two (2) disorderly conduct (one incident of patrons exiting drunk and banging on windows and the other incident of patrons exiting screaming and yelling) and one (1) violation of bottle service. See *Davinci Lounge and Restaurant Inc. v. City of Providence, Board of Licenses*, DBR No. 18LQ012 (8/8/18). The Board did not distinguish between the two (2) licensees so that the penalties appear on both licensees' licensing history. *Id.*

I. What Sanctions are Justified

The Department's statutory mandate and role as a superlicensing authority informs its decisions on ensuring that sanctions are not arbitrary and capricious. Indeed, when it fails in its obligation to backstop local authorities' decisions, the Superior Court will overturn the Department's decision. See *Jake and Ella's v. the Department of Business Regulation*, 2002 WL 977812 (R.I.Super. 2002).

In *Pakse*, the Department and Superior Court upheld the progressive discipline imposed on said licensee for repeated underage violations. The Court found that the local authority was

authorized to impose a reasonable sanction that would deter the licensee from repeatedly violating the law, and the Department found that the local authority's imposition of a two (2) day suspension for the first offence with progressively harsher sanctions for the second and third offense, and revocation for the fourth was not arbitrary and capricious because it was based on the premise that the licensee's continued (repeated) violations posed a danger to the community. Thus, the Court upheld the Department's conclusion that revocation represented a reasonable punishment after the logical progression of suspension sanctions related to repeated violations posing a public danger. In contrast to *Pakse*, the Superior Court overturned the Department in *Jake and Ella*'s finding that a license revocation was arbitrary and extreme. In that matter, the licensee had two (2) after-hour violations with the first violation receiving a monetary sanction and the second violation receiving a revocation. The Court found that the Department ignored the concept of proportionality that was expected to be applied so that there was an abuse of discretion. The Court found that sanctions need to be reasonably related to the severity of the conduct and in considering the type of sanction to be imposed, factors such as real/potential danger to the public, the nature of any previous violations sanction, the type of violations, and other relevant facts should be considered. In that matter, the local authority jumped from a monetary fine to a revocation for identical violations without a finding that the violations were egregious and extreme. The Department has consistently reviewed local decisions in light of the concept of progressive discipline as well as proportionality in terms of types of violations unless the violation is so egregious as to warrant immediate revocation. Thus, the Department ensures that the sanctions that are imposed are proportional to the violations and that progressive discipline is followed as appropriate.

In terms of progressive discipline, as discussed above the imposition of sanctions is not based on a mechanical grid and must be proportional (e.g. appropriate progressive discipline). Thus, if a

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

The Department's statutory mandate and role as a superlicensing authority informs its decisions on ensuring that sanctions are not arbitrary and capricious. In terms of applying the Board's goal – ensuring the Appellants are responsible licensees - the undersigned will address the other violations before looking at Romeo's actions.

Looking at the licenses separately, prior to the violations in this matter and from 2016 to 2018, the restaurant had five (5) entertainment without a license, three (3) tobacco sales, and three (3) public smoking violations as well as sharing two (2) disorderly conduct and a bottle service violation with the cigar bar. For these violations, the restaurant only received monetary penalties. It now has three (3) violations for entertainment without a license as well a smoking violation, an after-hours violation, and a disorderly violation.

Based on the foregoing, in light of progressive discipline and proportionality of sanctions as well as weighing the type of violations and reviewing prior cases, a suspension of 21 days is appropriate for the restaurant.[19] This sanction reflects the following: a) 18 days for the three (3) counts of entertainment without a license (because of the five (5) very recent entertainment without

[19] These series of violations do not represent a series of infractions as detailed in *Pakse* that rise to the level of justifying revocation. For example in *Secretos, LLC v. City of Providence, Board of Licenses*, DBR No.: 15LQ010 (8/11/15), there were ten (10) R.I. Gen. Laws § 3-5-21 violations (nonviolent) that occurred after three (3) prior R.I. Gen. Laws § 3-5-21 violations. The new violations merited a 22 day suspension of liquor license and administrative penalties because of the types of violations (included overcapacity). When prior discipline has been more severe, non-disorderly conduct violations merit higher sanctions especially when some occurred during the late night license's suspension for prior violations. Thus, in *Ciello, LLC v. City of Providence, Board of Licenses*, DBR No.: 18LQ004 (5/28/18), nine (9) non-disorderly conduct violations merited a $9,000 administrative penalty and a 65 day suspension of the extended hours license because prior discipline had included non-disorderly conduct violations **and** a very serious failure of security (that merited a suspension of the Class BV liquor license for 30 days and the extended hour license for 180 days).

a license violations); and b) three (3) days for permitting public smoking (in light of the three (3) prior public smoking violations).

Prior to the violations in this matter and from 2016 to 2018, the cigar bar had four (4) entertainment without a license and three (3) underage violations as well as sharing two (2) disorderly conduct and a bottle service violation with the restaurant. For these violations, the cigar bar only received monetary penalties. It now has a bottle service, an underage, an overcapacity, an after-hours, a disorderly, and two (2) entertainment without a license violations.

Based on the foregoing, in light of progressive discipline and proportionality of sanctions as well as weighing the type of violations and reviewing prior cases, a suspension of 19 days for the cigar bar is appropriate.[20] This sanction reflects the following: a) seven (7) days for the overcapacity;[21] and b) 12 days for the two (2) instances of entertainment without a license (in light of its four (4) recent entertainment without a license violations).

The Board did not impose the maximum administrative penalties for the April and June, 2018 violations apparently because of the length of time prior to the hearing on them. The Department will uphold the $500 administrative penalty imposed on the Appellants for the April, 2018 violations[22] and the $250 administrative penalty on the cigar bar for the June, 2018 violation. However, because of the Appellants continuous recent violations especially of entertainment

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[20] *Id.*

[21] This is consistent and proportional with prior statewide sanctions for overcapacity. As the Department found in *City of Newport v. The Great American Pub d/b/a Thames Street Station*, LCA-NE-99-21 (3/23/00), overcrowding is "not a matter to be taken lightly." *Id.* 5. It is important that licensees maintain their appropriate capacity. There was a two (2) week suspension imposed in *Great American Pub* for overcapacity after a one (1) week suspension was imposed two (2) years prior for overcapacity. In *J.H. Enterprises d/b/a The Rhino Bar and Grill v. Newport City Council*, DBR No.: 07-L-0185 (11/8/07), there was a three (3) day suspension imposed for one (1) count of overcapacity. In that matter, the licensee had previously been suspended for another violation for three (3) days two (2) years prior and the prior year had a three (3) day suspension for a different violation.

[22] It should be noted that both licensees have the disorderly and after-hour violations for April 21, 2018 but the smoking and entertainment without a license violations for April 29, 2018 are for the restaurant, and the bottle service violation for April 29, 2018 is for the cigar bar. The $500 administrative penalty is for all April, 2018 violations.

without a license, the maximum penalties should be imposed for the December violations. Therefore, an administrative penalty of $2,000 is imposed on the restaurant for the two (2) December entertainment without a license violations and a $3,000 administrative penalty is imposed on the cigar bar for the two December (2) entertainment without a license violations and the overcapacity violation.

The Board chose not to impose a sanction on the Appellants' license due to Romeo Rouhana's actions. Instead the Board ordered him to divest his holdings from the Appellants and never to hold liquor license in Providence again. However, the action before the Board relates to the Appellants' liquor licenses and not Romeo Rouhana as an individual. Therefore, the appropriate sanction for his actions relate to the Appellants' license which includes management.

In *The Vault, LLC v. City of Providence, Board of Licenses*, DBR No.: 16LQ008 (9/14/16), the licensee previously had a few violations of the non-disorderly type where it received monetary penalties and a four (4) day suspension for entertainment without a license and using an unlicensed promoter. *The Vault* represented the licensee's first disorderly conduct violation where a disgruntled patron who had been ejected fired his gun outside after retrieving it from his car. The licensee's employee lied to the police regarding the facts. It was disputed whether the employee lied to the police on instructions of management or not, but the employee lied. Even if management had not instructed the employee to lie, the licensee was responsible for the acts of its employee. The decision found that "[s]uch a statement to the police violates R.I. Gen. Laws § 3-5-21(b) [footnote omitted] since it is axiomatic that a condition of licensing would include being honest when questioned by the police during an investigation of a shooting." Because of the facts regarding the non-cooperation with the police regarding the disorderly conduct investigation, the Department upheld the Board's ten (10) day

suspension for the BV license and 60 day late night license suspension as that represented the penalty for disorderly conduct after smaller violations **and** non-cooperation with the police.

Here, the facts are even more egregious than the extremely serious violation of lying to the police. The manager and co-owner of both licenses tried to give money to the police to ignore the Appellants' violations. Not only is it axiomatic that being honest when questioned by the police is a condition of licensing, it is even more obvious that not giving money – especially by a manager and an owner - to the police to overlook violations (that in this case were a continuous disregard for entertainment requirements) is a condition of licensing. Such actions are tantamount to lying to the police as well as represent being uncooperative with the police and could serve to undermine the public trust in and integrity of the licensing statutory requirements.

Romeo's actions are serious and extremely troubling. Such actions necessitate a severe sanction of the Appellants' liquor licenses. It is appropriate to impose conditions[23] of licensing as well as take action on the liquor licenses due to Romeo's actions.

Based on the foregoing, the Appellants' Class BV licenses are suspended for Romeo's actions for 100 days and the Appellants' extended hours licenses are revoked.[24] In addition,

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[23] Under *Thompson v. East Greenwich*, 512 A.2d 837 (R.I. 1986), a town may grant a liquor license upon conditions that promote the reasonable control of alcoholic beverages. See *Sugar, Inc., and Sharlene Alon v. City of Providence, Board of Licenses*, DBR No.: 09-L-0119 (3/8/10). In this situation, the issue relates to ensuring competent management of a liquor licensee that understands and follows the pertinent liquor statutes and regulations.

[24] While Romeo's actions do not constitute disorderly conduct, his actions represent a danger to the public by undermining regulatory enforcement. Similarly, very serious disorderly conduct in the context of progressive discipline merited the revocation of the extended hours license and 60 suspension of the Class BV license in both *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ054 (12/3/14) and *J. Acqua, Inc. d/b/a Acqua Lounge v. City of Providence, Board of Licenses*, DBR No. 16LQ014 (11/28/16). In *Moe's Place,* the licensee previously received a two (2) day suspension for disorderly conduct, a five (5) day suspension for nuisance, and a seven (7) day suspension for various violations such as overcapacity and drinks advertising and a disturbance. The licensee had its fourth disorderly conduct violation in less than two (2) years when a patron brought a knife inside the premises despite security pat-downs and stabbed another patron. As a result, the Class BV license was suspended for 60 days and the 2:00 a.m. license was revoked. In *J. Acqua, Inc.*, the licensee had two (2) administrative penalties within two (2) years prior to the incident and two (2) separate suspensions for disorderly conduct within two (2) years prior to the incidence. In that matter, a patron brought a gun into the premises and fired it into the ceiling. The licensee received a 60 day suspension of its Class BV license and revocation of its 2:00 a.m. license.

Romeo Rouhana shall not be involved in the day-to-day operations of and shall not act as an on-site manager or as any kind of employee for either licensee. Attempts to subvert the regulatory process cannot be supported and need to be dealt with severely.

This proceeding involves the Appellants' licenses. Under *Thompson v. East Greenwich*, 512 A.2d 837 (R.I. 1986), a town may grant a liquor license upon conditions that promote the reasonable control of alcoholic beverages and removing Romeo from ownership of the Appellants may be part of that kind of condition of licensing placed on a specific license which is different from a blanket ban. The Department will at this time decline to uphold the general ban on Romeo holding a liquor license and the divestment of his ownership of the Appellants.

J. Conclusion

The restaurant violated R.I. Gen. Laws § 3-5-23 by having one (1) disorderly violation and violated R.I. Gen. Laws § 3-5-21 five (5) times by having three (3) entertainment without a license, permitting smoking, and an after-hour violations.

The cigar bar violated R.I. Gen. Laws § 3-5-23 by having one (1) disorderly violation and violated R.I. Gen. Laws § 3-5-21 six (6) times by having a bottle service, an overcapacity, an underage service, an after-hour, and two (2) entertainment without a license violations.

The Appellants violated R.I. Gen. Laws § 3-5-21 due to Romeo Rouhana's actions.

For the April violations, the Appellants shall pay an administrative penalty of $500.

For its other violations, the cigar bar shall pay an administrative penalty of $3,250 (underage, overcapacity, two (2) entertainment without a license).

For its other violations, the restaurant shall pay an administrative penalty of $2,000 (two (2) entertainment without a license).

The restaurant shall have its Class BV license suspended for 121 days (as detailed above for its violations in light of progressive discipline and Romeo's actions).[25]

The cigar bar shall have its Class BV license suspended for 119 days (as detailed above for its violations in light of progressive discipline and Romeo's actions).[26]

The Appellants' extended hours' licenses are revoked (Romeo's actions).

Romeo Rouhana shall not be involved in the day-to-day operations and shall not act as an on-site manager or any kind of employee for either of the Appellants.

The Appellants shall maintain a police detail on Friday and Saturday nights as well as any openings the night before a State holiday. In light of a police detail to be maintained once the BV suspensions are complete, there is no reason to roll back the liquor licensing closing time.

VI. FINDINGS OF FACT

1. On January 31, 2019, the Board imposed a total of $2,750 in administrative penalties, a 60 day suspension of license, reduction of hours to midnight, and revocation of the BVX (extended hours) on the Appellants' Class BVX liquor licenses. In addition, the Board ordered Romeo Rouhana to be divested from any form of ownership, employment, or managerial relationship for either licensee and imposed a lifetime ban on him for liquor licenses within the City of Providence.

2. Pursuant to R.I. Gen. Laws § 3-7-21 and R.I. Gen. Laws § 3-5-21, the Appellants appealed the Board's decision to the Director of the Department.

3. A *de novo* hearing was held on March 1, 2019 before the undersigned sitting as a designee of the Director. The parties were represented by counsel who rested on the record.

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

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[25] This license suspension only goes for the Class BV liquor license and not the extended hours' license as the extended hours license is to be revoked.
[26] *Id.*

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 3-5-1 *et seq.*, R. I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. The restaurant violated R.I. Gen. Laws § 3-5-23 by having one (1) disorderly violation and violated R.I. Gen. Laws § 3-5-21 five (5) times by having three (3) entertainment without a license, permitting smoking, and an after-hour violations.

3. The cigar bar violated R.I. Gen. Laws § 3-5-23 by having one (1) disorderly violation and violated R.I. Gen. Laws § 3-5-21 six (6) times by having a bottle service, an overcapacity, an underage service, an after-hour, and two (2) entertainment without a license violations.

4. The Appellants violated R.I. Gen. Laws § 3-5-21 due to Romeo's actions.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the following sanctions be imposed on the Appellants:

1. The Appellants shall pay an administrative penalty of $500.

2. The cigar bar shall pay an administrative penalty of $3,250.

3. The restaurant shall pay an administrative penalty of $2,000.[27]

4. The restaurant shall have its Class BV license suspended for 121 days.[28]

5. The cigar bar shall have its Class BV license suspended for 119 days.[29]

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[27] All administrative penalties are due by the 31st day after this decision is issued.
[28] As no stay of the license suspension was issued in this matter, the calculation of the time to be served for the suspension shall include the time served after the Board ordered the suspension.
[29] *Id.*

6. The Appellants' extended hours' licenses are revoked.

7. Romeo Rouhana shall not be involved in the day-to-day operations and shall not act as an on-site manager or any kind of employee for either of the Appellants.

8. The Appellants shall maintain a police detail on Friday and Saturday nights as well as any openings the night before a State holiday.[30]

Dated: April 1, 2019

Catherine R. Warren
Hearing Officer

ORDER

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

__X__ ADOPT (with attached modification)
_____ REJECT
_____ MODIFY

Dated: 4/3/19

Elizabeth Tanner, Esquire
Director

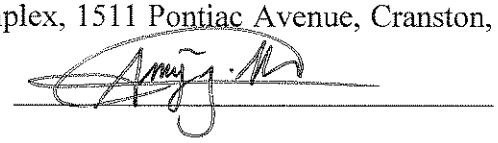
[30] This is to begin once the Class BV license suspension is completed.

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 4th day of April, 2019 that a copy of the within Order was sent by first class mail, postage prepaid to the following: Sergio Spaziano, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903 Sspaziano@providenceri.gov, Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904, peter330350@gmail.com, and by hand-delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.



DIRECTOR'S MODIFICATION OF RECOMMENDED DECISION

The Director adopts the recommended decision with the following modification:

With regard to the Appellants' obligation to maintain a police detail on Friday and Saturday nights as well as any openings the night before a State holiday (pursuant to Paragraph 8 in Section VIII entitled "Recommendation"), this condition is modified such that on the required nights, the Appellants must obtain either a police detail or additional private security with their own personnel in the same strength and for the same time period as would have been provided by the police detail.