

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

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<b>334 South Water LLC d/b/a Mile &amp; A Quarter,</b> <b>Appellant,</b>	:	
	:	
v.	:	<b>DBR No.: 17LQ006</b>
	:	
<b>City of Providence, Board of Licenses,</b> <b>Appellee.</b>	:	
	:	

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**DECISION**

**I. INTRODUCTION**

This matter arose from an appeal filed by 334 South Water LLC d/b/a Mile & A Quarter (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 and R.I. Gen. Laws § 3-2-2 regarding a decision taken by the City of Providence, Board of Licenses (“Board” or “City”) on April 17, 2017 revoking the Appellant’s Class BVX liquor license (“License”) and imposing an administrative penalty of \$2,000. A hearing was held on May 1, 2017 before the undersigned<sup>1</sup> with the parties resting on the record. The parties were represented by counsel. By decision dated May 22, 2017, this matter was remanded to the Board for further proceedings. On or about June 17, 2017, the Board informed the undersigned that no resolution could be reached and requested a decision be entered.

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<sup>1</sup> Pursuant to a delegation of authority by the Director of the Department.

## **II. JURISDICTION**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-2, R.I. Gen. Laws § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

## **III. ISSUES**

Whether there was disorderly conduct pursuant to R.I. Gen. Laws § 3-5-23 at the Appellant's on February 25, 2017 and if so, what sanction(s) should be imposed.

## **IV. MATERIAL FACTS AND TESTIMONY**

The parties relied on the record from the Board regarding the February 25, 2017 incidence. Oral argument was made before the Department on May 1, 2017.

The parties did not dispute that a double shooting (no fatalities) happened at 2:15 a.m. on February 25, 2017 on South Water Street in Providence near the Appellant.

Patrol Officer Daniel Iamarone, Providence Police Department ("PPD"), testified before the Board that he responded to the general area of the Appellant in the early morning hours of February 25, 2017 in response to a dispatch call at about 2:15 a.m. He testified the victim was on the ground at the curb at South Water and James Street. On cross-examination, he testified that he did not write the police narrative.

Detective Koran Garcia, PPD, testified before the Board. He testified that he spoke to a victim at the hospital and that victim had been at the Appellant's that night and had been standing outside, when he was shot. He testified that he spoke to the victim's girlfriend who said she and the victim had been at a party at the Appellant and she had left about five (5) minutes before Kenny (victim) had let her know that he was shot, but she was not at the shooting. He testified that he found another victim who had gunshot wounds and the victim's mother said that the victim and

Kenny were friends and were supposed to be performing somewhere. He testified that he spoke to this other victim who said they were performing and did not mean for anyone to get disrespected. On cross-examination, he testified that he wrote the police report and that he talked to the girlfriend and the girlfriend had said that there had not been any issues that night. On questioning from the Board, he testified that other than the victim saying that he did not mean anyone disrespect, no one was cooperative about what had occurred, if anything, inside. He testified that he did not speak to the manager. See City's Exhibit One (1) (certified record including police report).

Detective Paul Renzi, PPD, testified before the Board that he processed the crime scene and found six (6) cartridge casings in the road on the south corner, in front of the Appellant.

Sergeant David Tejada ("Tejada"), PPD, testified before the Board. He testified that the exterior video was turned over by the Appellant in response to a subpoena, but the interior video was not. He testified that he responded that night and spoke to a woman who identified herself as a server and said she believed the victims were in the VIP area that night.<sup>2</sup>

The following can be ascertained by watching the video (See City's Exhibit Two (2)):

- 1:01 a.m. black car parked on street on left hand side next to curb (looking at video)
- 1:02:38 a.m. light sedan parks in front of the black car
- 1:03:45 a.m. two (2) men get out of light sedan
- 2:05 a.m. the two (2) cars are still parked
- 2:05 a.m. two (2) women walk up street, sit in park bench; about 10-15 people walk up street, congregate, and talk
- 2:06:41 a.m. another car parks in front of the light car so there are now three (3) cars parked in a row next to curb
- 2:07:35 to :44 a.m. two (2) men are talking through the window of the front car
- 2:08:48 a.m. two (2) men get in the middle car
- 2:09 a.m. men still talking at the front car
- 2:09:40 a.m. the sidewalk is clear except for the three (3) men talking to the front car and two (2) men talking through window of third car parked next to curb

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<sup>2</sup> Tejada also testified that after the shooting at 2:15 a.m., at 2:18 a.m., there was fighting in the Appellant's parking lot. He testified that at 2:21 a.m. on the video, the Appellant's manager is seen leaving in her car driving the wrong way down a one-way street and not talking to the police about the disturbances.

- 2:09:50 a.m. one (1) man walks away from the front car, two (2) men still talking to front car
- 2:11 a.m. man who walked away returns to the front car
- 2:11 a.m. the men talking at the last car look like they are dancing to music
- 2:12 a.m. car comes into intersection
- 2:13 a.m. a man from front car goes to talk to intersection car
- 2:13:15 a.m. another car drives up and stops next to the front car so is in middle of street
- 2:13:50 a.m. the car at the intersection leaves
- 2:13:52 a.m. the man in the middle car gets out of car
- 2:14:17 a.m. the front car next to curb drives off
- 2:14 a.m. a car pulls up behind the car that is parked next to where the front car was so this car is now next to the middle car and is in middle of the street
- 2:14:25 a.m. men get back in middle car next to curb and middle car leaves  
Now have two (2) cars, one behind the other, in the middle of the street and what was the third car parked next to curb is now only car parked next to curb. There are still two men talking and dancing next to the car parked next to curb
- 2:14:50 a.m. a man gets out of the back car parked in middle of the street and walks to car in front
- 2:15:07 a.m. man from the back car talking at front car's window. There is another man at the car window and a man to the left but not at the car window
- 2:15:21 to :37 a.m. man who got out of back car walks back to the car, gets a gun, shoots at the two (2) men in the street
- 2:15:42 a.m. the front car drives off as does the car next to the curb

## V. DISCUSSION

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

The hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984) and *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964). Thus, while there was not a new hearing before the Department, the proceeding before the Department is considered a *de novo* hearing. The outcome of an appeal is a decision whether to uphold, overturn, or modify a licensing board's decision. Therefore, this appeal is not bound by the Board's reasons for revocation but whether the Board presented its case for revocation before the undersigned. The undersigned will make her findings on the basis of the evidence before her and determine whether that evidence justifies said revocation.

The Department reviews sanctions to ensure statewide consistency and appropriateness in the situation. It also supports progressive discipline barring the rare and extreme event where revocation may be warranted without prior discipline. It also accepts the principles of comity and deference to the local authorities and their desire to have control over their own town or city. At the same time, pursuant to R.I. Gen. Laws § 3-2-2 and R.I. Gen. Laws § 3-7-21, the Department ensures that tensions between local boards and licensees are settled in a consistent manner. Nonetheless, there is not a mechanical application of sanctions as each matter has its own sets of circumstances. See *C&L Lounge, Inc. d/b/a Gabby's Bar and Grille; Gabriel L. Lopes v. Town of North Providence*, LCA – NP-98-17 (4/30/99). At the same time, a sanction cannot be arbitrary and capricious. The unevenness of the application of a sanction does not render its application unwarranted in law but excessive variance would be evidence that an action was arbitrary and capricious. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation for a series on infractions). See *Jake and Ella's v. Department of Business Regulation*, 2002 WL 977812 (R.I. Super.) (R.I. Super.) (overturning a revocation of a liquor license as arbitrary and capricious). Nonetheless, the revocation of a liquor license is a relatively rare event and is reserved for a severe infraction or a series of smaller infractions that rise to a level of jeopardizing public safety. See *Stage Bands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328508 (R.I. Super.) (disturbances and a shooting on one night justified revocation) and *Pakse Market Corp.* (upholding revocation of license when had four (4) incidents of underage sales within three (3) years). See also *Cardio Enterprises, d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (killing of patron with incident starting inside and escalating outside justified revocation).

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). See also *Scialo v. Smith*, 210 A.2d 595 (R.I. 1965). In civil proceedings, unless otherwise specified, the burden of proof generally needed for moving parties to prevail is a fair preponderance of the evidence. *Jackson Furniture Co. v Lieberman*, 14 A.2d 27 (R.I. 1940). See also *Parenti v. McConaghy*, 2006 WL 1314255 (R.I.Super.); and *Manny's Café, Inc. v. Tiverton Board of Commissioners*, LCA TI-97-16 (11/10/97) (Department decision discusses burden of proof for proceedings held pursuant to R.I. Gen. Laws § 3-7-21).

### **C. When Sanctions are Imposed**

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.

In imposing a sanction on a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. Rather, the Rhode Island Supreme Court held in *Cesaroni v. Smith*, 202 A.2d 292, 295-6 (R.I. 1964) as follows:

[T]he legislature, in enacting the pertinent provision of the statute, intended to impose upon such licensee the obligation to maintain an efficient and affirmative supervision over the conduct of his patrons in his place to such an extent as is necessary to maintain order therein. It is our opinion that as a practical matter a licensee assumes an obligation to affirmatively supervise the conduct of his patrons so as to preclude the generation therefrom of conditions in the neighborhood of like character to conditions that would result from maintenance of a nuisance therein.

It is to be conceded that this imposes upon a licensee an onerous burden in the management of the licensed premises. It is, however, within the authority of

the legislature, the liquor traffic being peculiarly within the police power of the state.

Furthermore, the Court found that “disorderly” as contemplated in the statute meant as follows:

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

In a denial of renewal matter,<sup>3</sup> *A.J.C. Enterprises v. Pastore*, 473 A.2d 269, 275 (R.I. 1984) found in discussing the disorderly provisions that “[T]here need not be a direct causal link between incidents occurring outside or nearby a drinking establishment and its patrons. Such a link is established when it can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within.”

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. Thus, a liquor licensee has the “responsibility to control the conduct of its patrons both within and without the premises in a manner so that the laws and regulations to which the license is subject will not be violated.” *Schillers, Inc. v. Pastore*, 419 A.2d 859, 859 (R.I. 1980). See also *Furtado v. Sarkas*, 118 R.I. 218 (1977).

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<sup>3</sup> In order to suspend or revoke a liquor license, there must be a showing that the holder has breached some applicable rule or regulation. In this matter, the City is relying on the disorderly provisions of R.I. Gen. Laws § 3-5-23. R.I. Gen. Laws § 3-7-6 requires that a denial of a renewal must be “for cause.” For cause has been interpreted to include (among other reasons) the violations of the disorderly provisions. *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61 (R.I. 1971).

#### **D. Arguments**

The Appellant argued that this matter was akin to *D. Liakos d/b/a Van Gogh v. Providence Board of Licenses*, DBR No.: 16LQ011 (10/31/16). In that matter, the Board found that there had been no disturbance inside the club and thus, no inference could be made that the fighting that occurred outside after the patrons exited the club was somehow indirectly related to something that had happened in the club. The Appellant argued that nothing happened inside except that someone might have gotten disrespected and that one statement to police say that nothing happened inside.

The Board argued that this matter was akin to the *CAG Productions, LP d/b/a Euphoria v. City of Providence, Board of Licenses*, DBR No.: 16LQ022 (4/6/17) where an inference was made that the pushing and shoving outside that culminated in the pepper spray was indirectly related to something happening inside the club upon exiting. The Board argued that since the Appellant did not turn over the interior video, an inference should be made that something happened inside. The Board represented that it believed the shooter was inside the Appellant that night. The Board argued that unlike *D. Liakos*, this shooting happened right outside the Appellant rather than down the street.

#### **E. Discussion**

There is no dispute that the February 25, 2017 incident involved dangerous and criminal behavior resulting in gunshot injuries to two (2) men.

From *Cesaroni* in 1964 to *Schillers* in 1980 up until today, a liquor licensee is responsible for activities inside and outside its licensed premises. It does not matter how well a liquor licensee supervises such responsibilities since even the most responsible supervising licensee is still responsible for disorderly conduct. See *Therault*. Under *Cesaroni* and *A.J.C. Enterprises*, the



Appellant is directly or indirectly responsible for the actions of its patrons and for the actions arising inside or emanating from inside a liquor licensee.

In this matter, there was no evidence of any disturbance starting inside the bar and spilling outside where it culminated in the fight. See *Stage Bands* and *Cardio*. There was no evidence (whether eyewitness, on video, in a police report, etc.) entered at hearing that there was any disturbance whether oral or physical in the club that night. There was no testimony by patrons or police officers before the City or the Department regarding any disturbance within the club.

There was evidence that both victims had been in the club that night. A victim's girlfriend told the police nothing had happened inside. Additionally, the Board made no finding in its decision that the shooting was directly or indirectly related to something inside. It made no inference regarding how the Appellant could be linked to the shooting. Instead, it concluded that the incident represents another occurrence of violence at the establishment.

The Board argued that the Appellant's failure to turn over the video demonstrated that it was hiding something. Based on Tejada's testimony, the Appellant turned over the exterior video in response to a Board subpoena, but not the interior video.<sup>4</sup> Section 1102 of the *Providence Code of Ordinances* provides that anyone disobeying a subpoena issued by the Board shall be considered in contempt and the Board may seek a citation in contempt from Superior Court. In addition, pursuant to section 2.13 of 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearings*, the Department may issue subpoenas for records. Thus, the City could have sought a Court order compelling the Appellant to turn over the interior video and/or subpoenaed the video for the

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<sup>4</sup> At the Board hearing, the Appellant represented that it did not turn over the video because in another matter when a liquor licensee turned over a security video for a criminal investigation, it was used against said licensee for a civil matter and Superior Court denied an injunction to stop the use of the video in a civil matter finding that the video had already been turned over.

Department hearing. As the City had recourse to obtain the video, it does not necessarily follow that the Appellant is hiding something as it still could have been forced to turn over the video.

It is not enough that the victims were the Appellant's patrons to make the Appellant responsible for their actions. There is a very strict requirement that makes a licensee responsible for actions inside the bar and those outside activities that arise from inside the bar even if the licensee did not know of the actions or tried to supervise its patrons and prevent the activities. However, in order for the Appellant to be responsible there must be some kind of activity for which the bar is responsible for and from which it can be inferred the fighting arose. See *A.J. C. Enterprises and Cesaroni*. See also *D. Liakos d/b/a Van Gogh, Salacruz, LLC d/b/a Sky Lounge v. City of Providence Board of Licenses*, DBR No. 14LQ046 (11/25/14); and *El Tiburon Sports Bar, Inc. v. Providence Board of Licenses*, DBR No. 06-L-0087 (6/1/07) (victim had been a patron of that bar but was assaulted down the street and there was no link between the bar and the assault).

The evidence of the shooting shows that 15 minutes after closing, someone shot two (2) other people very close to the Appellant's location. Prior to the shooting, the street and intersection had been quiet. People had walked down the street with no problem. There had been no evidence of fighting, pushing, shoving, or even arguing on the street. At one point, there was only a few people on the street, some talking to the front car and some talking to the back car (both by the curb). The car with the shooter in it pulls up at 2:14 a.m. and the shooter gets out and speaks briefly to the person/people in the front car. The shooter then gets a gun and shoots the two (2) men outside. It cannot be found that what transpired at 2:14 a.m. can be indirectly linked to the Appellant based on the evidence at hearing.<sup>5</sup>

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<sup>5</sup> There was fighting after the shooting and the manager apparently left rather than see what was happening in the parking lot. The City argued that further disorderly conduct was linked to the shooting, but since the shooting is not linked to the Appellant, that disorderly conduct cannot be linked to the Appellant.

The case law is consistently clear that a liquor licensee is responsible for activity inside and activity outside that can be directly or indirectly inferred to arise from inside. In this matter, there is no evidence that the shooting outside can be linked indirectly or directly to any occurrence inside the Appellant. Therefore, there can be no finding that the Appellant violated R.I. Gen. Laws § 3-5-23.<sup>6</sup>

#### **F. Administrative Penalties**

In this matter, the City imposed a \$2,000 administrative penalty for violating R.I. Gen. Laws § 3-5-21 and R.I. Gen. Laws § 3-5-23. Pursuant to R.I. Gen. Laws § 3-7-21, the Department does not have authority to hear appeals of fines. However, the Superior Court found that the Department has implied jurisdiction to review administrative fines imposed by local boards pursuant to R.I. Gen. Laws § 3-5-21. See *The Rack, Inc. d/b/a Smoke v. Providence Board of Licenses*, et al. CA No. PC 2011-5909 (7/22/13).

### **VI. FINDINGS OF FACT**

1. On or about April 17, 2017, the Board revoked the Appellant's Class BVX license and imposed an administrative penalty of \$2,000 for violating R.I. Gen. Laws § 3-5-21 and R.I. Gen. Laws § 3-5-23.
2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision.
3. A hearing on this matter was held on May 1, 2017 with the parties resting on the record. The parties made oral closings.

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<sup>6</sup> At the Board hearing, the Appellant represented that it no longer wanted to operate "the loft" part of its premises and just wanted to operate its restaurant, but wanted to maintain its 2:00 a.m. license for special functions like weddings and would be willing to come into the Board a week before the function or wedding to obtain permission for what was planned. The city did not have an objection to the restaurant remaining open, but felt that the Appellant did not need a 2:00 a.m. license and that with the Appellant's licensing history, the revocation of the late license was justified. The undersigned remanded this matter to the Board for the parties to determine if a resolution could be reached. No resolution was reached. The undersigned declines to recommend any conditions as there has been no finding of disorderly conduct (despite the concerns of the manager leaving the scene, etc.).

4. By order dated May 22, 2017, this matter was remanded to the Board. On or about June 17, 2017, the Board requested that a decision be issued.

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

**VII. CONCLUSIONS OF LAW**


Based on the testimony and facts presented:

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

**VIII. RECOMMENDATION**

Based on the forgoing, the Hearing Officer recommends that the decision of the City revoking Appellant's Class BVX License and imposing administrative penalties be overturned.

Dated: 7/31/17

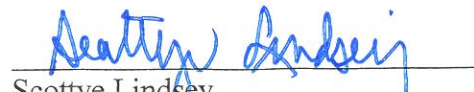
  
Catherine R. Warren  
Hearing Officer

**ORDER**

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

ADOPT  
 REJECT  
 MODIFY

Dated: 8/2/17

  
Scottye Lindsey  
Director

NOTICE OF APPELLATE RIGHTS

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

CERTIFICATION

I hereby certify on this 2 day of August, 2017 that a copy of the within Decision was sent by first class mail, postage prepaid to Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904 and Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903 and by hand-delivery to Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920.

  
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