

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

D. Liakos d/b/a Van Gogh,
Appellant,

v.

City of Providence, Board of Licenses,
Appellee.

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DBR No.: 16LQ011

**RECOMMENDATION AND INTERIM ORDER GRANTING MOTION
FOR STAY WITH CONDITIONS AND NOTICE FOR *DE NOVO* HEARING**

I. INTRODUCTION

This matter arose from a motion for stay filed by D. Liakos d/b/a Van Gogh (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken by the City of Providence, Board of Licenses (“Board”) to revoke its Class BVX liquor license (“License”). Prior to the Board’s decision to revoke the License, the Department held a hearing on September 2, 2016 on the Appellant’s motion to re-open the Appellant pending the Board’s decision. By order dated September 2, 2016, the Department denied the stay, but ordered the Board to make a decision on the pending allegations against the Appellant. On September 6, 2016, the Board revoked the Appellant’s License from which the Appellant appeals and requests a stay. A hearing on the stay hearing was heard on September 9, 2016.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to 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.*

A liquor appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21 is considered a *de novo* hearing. The Department's jurisdiction is *de novo* and the Department independently exercises the licensing function. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964); and *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Because the Department's has such broad and comprehensive control over traffic in intoxicating liquor, its power has been referred to as a "super-licensing board." *Baginski v. Alcoholic Beverage Comm.*, 4 A.2d 265, 267 (R.I. 1939). See also *Board of Police Com'rs v. Reynolds*, 133 A.2d 737 (R.I. 1957). The purpose of this authority is to ensure the uniform and consistent regulation of liquor statewide. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964).

III. STANDARDS FOR DISORDERLY CONDUCT AND BASIS FOR REVOCATION

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 revoking or suspending 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, 295-296 (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,¹ *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." The Court found that the neighbors who all lived in the area "testified at length concerning the increase in noise, parking congestion, litter, public urination, patrons either screaming, intoxicated, or pugnacious, as well as an increase in various other activities, all of which disrupted the neighborhood's established way of life." *Id.* at 274. Further, the Court found as follows:

In this case several witnesses testified that they watched people urinate on private property after leaving Back Street and that when the establishment closed at night there was a great deal of noise because people were yelling, screaming, slamming car doors, and revving engines. These occurrences did not take place before Back Street opened. We feel it is reasonable to infer from the evidence that the undesirable activities that occurred outside and around Back Street had their origin within. Consequently, we shall not disturb the conclusions and the actions of the trial justice. *Id.* at 275.

¹ 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).

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 (R.I. 1980).

A liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali*. 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, 842-3 (R.I. 1966). See also *Scialo v. Smith*, 99 R.I. 738 (R.I. 1965). As the Supreme Court has found, “the responsibility of a licensee for the conduct of his patrons within the licensed premises that makes it disorderly within the meaning of the statute is established by evidence showing a toleration or acquiescence in such conduct by the licensee.” *Cesaroni*, at 296.

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).

IV. STANDARD FOR ISSUANCE OF A STAY

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976), a stay will not be issued unless the party seeking the stay makes a “strong showing” that “(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not

granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest.” Despite the ruling in *Harsch*, the Supreme Court in *Department of Corrections v. Rhode Island State Labor Relations Board*, 658 A.2d 509 (R.I. 1995) found that *Harsch* was not necessarily applicable in all agency actions and the Court could maintain the *status quo* in its discretion when reviewing an administrative decision pursuant to R.I. Gen. Laws § 42-35-15(c). The issue before the undersigned is a motion to stay a Decision which is subject to a *de novo* appeal and does not fall under R.I. Gen. Laws § 42-35-15(c). Nonetheless, it is instructive to note that the *Department of Corrections* found it a matter of discretion to hold matters in *status quo* pending review of an agency decision on its merits.

V. PRIOR DISCIPLINE

The Appellant has been licensed for at least ten (10) years and was previously Club Monet. As Club Monet is was disciplined for disorderly conduct involving a shooting outside in approximately 2012. In October, 2015, its license was suspended for 50 days for disorderly conduct.

VI. DISCUSSION

There are certain facts not in dispute regarding the incidents of the evening of August 19 to 20, 2016. A party bus came unexpectedly to the Appellant and its occupants were let in the club. The Appellant’s manager searched the bus. Whether the police officer on detail assisted in the search is in dispute, but it is known that he knew of the search and was at least at the bus during the search.

The parties agreed and the Board found that there was no altercation inside the club prior to the party bus patrons exiting. At about 2:10 a.m. outside the Appellant – either 200 feet or 500

feet away – there was a fight between two (2) women, another patron was punched unconscious, and a man was stabbed.

The Appellant argued that the police officers exaggerated their testimony and it was at odds with the interview of a patron and one of the women in the fight. The Appellant relied on the audio interview of the patron and the video interview taken of the woman as well as a transcript of Officer Dyer's testimony at the Board hearing. The Appellant argued that it had a substantial likelihood of success to overturn the revocation. The Appellant offered as part of a stay that it would continue with the police detail and refuse to accept party buses.

The City argued that the Board heard both the audio and video and took them into consideration when making a decision. The City argued that everyone involved in the outside altercation had been a patron at the Appellant. The City disagreed that the police officer's testimony was exaggerated and contradicted by the two (2) interviews, but argued that at the end of the day, there is no dispute that there were altercations outside with fighting, stabbing, and someone being punched unconscious. The City argued that based on the history of the Appellant, the only logical step was revocation as the Appellant has had a series of infractions and putting in protocols such as police details have not worked. The City argued that it has a substantial likelihood of success on the merits and there was a public safety issue.

The Board argued that as the Appellant accepted the party bus, it had the responsibility to ensure that the party bus patrons were safely back on the bus. The Board argued that the Appellant could have had the bus driver move the bus to the front of the club to pick up the patrons. The club does not have a parking lot and bus was parked on Harris Avenue where the club is located. The Board agreed that the club took positive steps to search the bus and to assist in breaking up the fights and assisted the stabbing victim while waiting for rescue. However, the Board argued that

the Appellant's inability to provide safe passage for its patrons to the party bus justified revocation. The Board argued that the Appellant knew there was a party bus and had a responsibility for it.

Upon questioning from the undersigned, the Board indicated that the Board has no written protocols for how liquor licensees should handle party buses.

The information received by the undersigned is based on representations of the parties and some exhibits. The undersigned did not have a complete transcript of the Board hearing.

Under *Cesaroni* and *A.J.C. Enterprises*, the Appellant is directly or indirectly responsible for actions arising inside or emanating from inside the bar. 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*. 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 *Salacruz, LLC d/b/a Sky Lounge v. City of Providence Board of Licenses*, DBR No. 14LQ046 (11/25/15).²

In its findings, the Board found there was no altercation inside the club before the fighting outside. The Board made no inferences in its findings regarding how the Appellant was responsible for the fighting except for indicating in its decision that the Appellant was aware that its patrons would have to walk down the street to return to the party bus. The Board argued at the stay hearing that the Appellant is responsible for the party bus patrons' safety on their return to the bus. This argument would apparently extend the responsibility of a licensee over its patrons once they have left an establishment without an issue. A liquor licensee has the obligation to supervise

² As that decision found, under *Cesaroni*, Sky was directly or indirectly responsible for the actions of its patrons and for the actions arising inside or emanating from inside the bar. There was no evidence of any disturbance starting inside the bar and spilling outside where it culminated in the shooting. See *Stage Bands* and *Cardio*. Assuming the shooter was a patron, there was no evidence establishing that the shooting had its origins in something that arose in the bar.

the conduct of its patrons to prevent the licensee from becoming a nuisance in the neighborhood. And the Court has found that disorderly means conduct within the premises that directly or indirectly cause conditions in the neighborhood that annoy or disturb the residents thereof. *Cesaroni, supra.*


The Department has consistently followed progressive discipline barring an egregious act. Applying the stay criteria, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal.

It is unclear if the Appellant is responsible for the fighting and furthermore, the issue of the party bus and a licensee's responsibility for a party bus is a new issue. Such determinations will depend on a hearing and a full review of the evidence and legal arguments regarding both incidents. Nonetheless, while there is a disputed issue regarding whether the Appellant can be directly or indirectly linked to the actions of its patrons after leaving the club, there is always a public safety issue.

VII. RECOMMENDATION

Based on the forgoing, the undersigned recommends that a stay be granted but that the weekend police detail remain and that the Appellant stops accepting any party buses. Furthermore, the Appellant shall immediately file with the Board its security plan.

Dated: 9/14/16

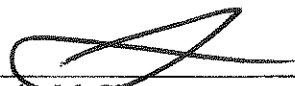

Catherine R. Warren
Hearing Officer

INTERIM ORDER

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

ADOPT
 REJECT
 MODIFY

Dated: 9/15/16



Macky McCleary
Director

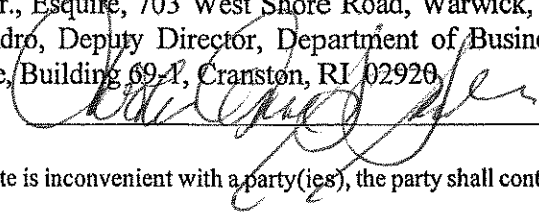
A hearing will be held on September 23, 2016 at 9:30 a.m. at the Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.³

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 15th day of September, 2016 that a copy of the within Order was sent by email and first class mail, postage prepaid, to the following: Mario Martone, Esquire, and Stephen Ryan, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903, Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, RI 02904, and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 02889 and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920.



³ The Appellant is responsible for the stenographer. If this date is inconvenient with a party(ies), the party shall contact the other party and hearing office to reschedule.