

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

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Tropicana Restaurant and Bar,  
Appellant,

v.

DBR No.: 16LQ021

The City of Providence Board of Licenses,  
Appellee.

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ORDER ON MOTION FOR STAY

**I. INTRODUCTION**

This matter arose from a motion for stay and appeal filed by Tropicana Restaurant and Bar (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding a decision taken by the City of Providence, Board of Licenses (“Board”) revoking the Appellant’s Class BV liquor license. A hearing on the motion for stay was held on December 22, 2016 before the undersigned 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. § 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.*

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. MOTION TO STAY

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." *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976). 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). While appeals before the Department do not fall under R.I. Gen. Laws § 42-35-15(c), 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.

### IV. STANDARDS FOR DISORDERLY CONDUCT

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.

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 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, 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. In a denial of renewal matter,<sup>1</sup> the Rhode Island Supreme Court 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.J.C. Enterprises* at 275. See also *Schillers*; and *Furtado v. Sarkas*, 373 A.2d 169 (R.I. 1977).

Nonetheless, the revocation of a liquor license is a relatively rare event and is reserved for a severe infraction or a series of smaller infractions that rise to a level of jeopardizing public safety. See *Stagebands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.) (disturbances and a shooting on one night justified revocation) and *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation of license when had four (4) incidents of underage sales within three (3) years). See also *Cardio Enterprises, d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (killing of patron with incident starting inside and escalating outside justified revocation); *PAP Restaurant, Inc. v. d/b/a Tailgate’s Grill and Bar v. Town of Smithfield, Board of License Commissioners*, DBR No.: 03-L-0019 (5/8/03) (series of infractions justified revocation).

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

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<sup>1</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. 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).

a revocation where the violation is not so egregious or extreme and the local authority has not engaged in progressive discipline. *Infra.*

**V. PRIOR DISCIPLINE**

The Appellant has been licensed for eight (8) years and has had administrative penalties imposed for such violations as underage drinking and entertainment without a license. It received a three (3) day suspension for not purchasing alcohol from a licensed distributor. The parties agreed that the Appellant had not had any prior incidences of disorderly conduct.

**VI. DISCUSSION**

The undersigned did not have a transcript of the Board hearing. Instead, the arguments were based on representations made by the parties. It was not disputed that there had been an altercation inside the establishment and that a patron was thrown out and came back and stabbed the Appellant's bouncer. The extent and nature of the altercation inside and outside are in dispute. The Board and City argued that the bouncer could have ejected the patron any time in the evening and had been told to do so by the owner, but that the bouncer did not. Instead, the Board and City argued that the bouncer escalated the incident by punching the patron and that the bouncer had to be restrained from patrons from further punching the patron and that this can be seen on video. The Appellant argued that the bouncer was an independent contractor, but did represent that if the establishment reopened that said bouncer would not be employed.

The Appellant argued that there had been no public harm to the public, but only to the bouncer (who suffered minor injuries). The Appellant argued that it had a strong likelihood of success on the merits and it would suffer irreparable harm if forced to close. The Appellant argued that the harm to the licensee outweighs the harm to the public. The City and Board argued that the Appellant has a long history of failing to comply with its statutory and regulatory requirements.

The City represented that the Appellant has made some progress in the past months in efforts to comply with its licensing obligations, but that this incident was caused by its own bouncer. The Appellant argued that the sanction of revocation for the incident was excessive.

## **VII. CONCLUSION**

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. However, it is discretionary to issue a stay in order to maintain the *status quo* pending an appeal. While there is no dispute that there was some kind of altercation, the appropriate sanction is in dispute. It is in the interest of the public that licensees abide by the law which can be addressed by imposing conditions on a stay. In this matter, an appropriate sanction cannot be ascertained without a full hearing. If a stay is not granted for the Appellant will not have a meaningful appeal. Granting a partial stay maintains the *status quo* pending the full hearing.

## **X. RECOMMENDATION**

Based on the forgoing, the undersigned recommends that following order be made.

1. A stay of the revocation of the Class BV is granted.
2. A police detail is ordered for Friday and Saturday nights and holidays such as Christmas, New Year's Eve, and July 4th.<sup>2</sup>
3. The Appellant shall file a security plan with the Board.

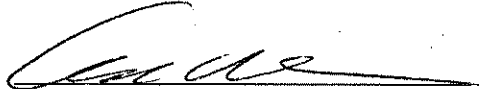
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<sup>2</sup> It should be noted that the Appellant is only open to 12 midnight and police details run usually from 10:00 p.m. to 2:00 a.m. The Appellant can either determine if a detail can run from 8:00 p.m. to midnight or if it can obtain a two (2) hour detail or if it has to obtain a 10:00 p.m. to 2:00 a.m. detail. If the only detail that can be obtained is a 10:00 p.m. to 2:00 a.m. detail, the establishment must still close by midnight. If the establishment cannot obtain a detail on a Friday or Saturday or holiday night, it cannot open that night.

Nothing in this order precludes the undersigned from revisiting this order because of a change in circumstances. E.g. the violation of any of the conditions could warrant a review of the stay order.

**The hearing shall be held on January 24, 2017 at 1:30 p.m. at the Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI.<sup>3</sup>**

Dated: 12/23/16

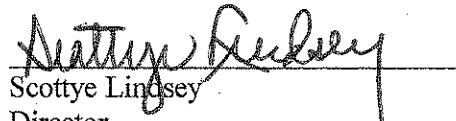
  
Catherine R. Warren  
Hearing Officer

**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: 12/27/16

  
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.**

<sup>3</sup> Pursuant to R.I. Gen. Laws §3-7-21, the Appellant is responsible for a stenographer for the hearing. If this date is not convenient for a party(ies), please contact the undersigned and the other party.

**CERTIFICATION**

I hereby certify on this 27<sup>th</sup> day of December, 2016 that a copy of the within Order and Notice of Appellate Rights was sent by first class mail, postage prepaid to Richard H. James, Esquire, 696 Reservoir Avenue, Cranston, RI 02910 and Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903 and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 02889 and by hand delivery to Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Bldg. 68-69, Cranston, RI 02920.

  
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