

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

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Pasha Lounge, Inc. d/b/a Pasha Hookah Bar,  
Appellant,

v.

City of Providence, Board of Licenses,  
Appellee.

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DBR No.: 17LQ007

RECOMMENDATION ON ORDER OF STAY

I. INTRODUCTION

This matter arose from a motion for stay filed by Pasha Lounge, Inc. d/b/a Pasha Hookah Bar (“Appellant”) regarding an order issued by the City of Providence, Board of Licenses (“Board”) on May 18, 2017 imposing a police detail every night that the Appellant is open and rolling back its closing time to 1:00 a.m. on Friday and Saturday.<sup>1</sup> The parties agreed that on May 16, 2017, pursuant to Providence Charter section 1102,<sup>2</sup> the Board held an emergency hearing regarding an

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<sup>1</sup> This liquor appeal to the Department is governed by R.I. Gen. Laws § 3-7-21 which provides in part as follows:

Appeals from the local boards to director. – (a) Upon the application of any petitioner for a license, or of any person authorized to protest against the granting of a license, including those persons granted standing pursuant to § 3-5-19, or upon the application of any licensee whose license has been revoked or suspended by any local board or authority, the director has the right to review the decision of any local board, and after hearing, to confirm or reverse the decision of the local board in whole or in part, and to make any decision or order he or she considers proper, but the application shall be made within ten (10) days after the making of the decision or order sought to be reviewed. Notice of the decision or order shall be given by the local or licensing board to the applicant within twenty-four (24) hours after the making of its decision or order and the decision or order shall not be suspended except by the order of the director.

<sup>2</sup> Providence Charter section 1102(3) provides as follows:

Unless otherwise provided by state law, suspend, annul, rescind, cancel or revoke any license issued by the board of licenses for any reason which the board may deem to be in the public interest; provided, however, that no license shall be suspended for more than seventy-two (72) hours or annulled, rescinded, cancelled or revoked unless the licensee shall have been given at least three (3) days' written notice of the action proposed to be taken and of the grounds therefor and the time and place of the hearing. The said licensee shall also be notified of the right to be represented at said hearing by legal counsel.

incident that occurred in the early hours of May 14, 2017 and suspended the Appellant's liquor license for the two (2) days between May 16 and May 18, 2017.<sup>3</sup> The parties agreed that on May 18, 2017, the Board issued the order about the police detail and the Appellant's hours pending the Board's hearing of the matter before the Board. The Board is scheduled to continue the hearing on May 24, 2017. The parties indicated that the Board probably would re-visit the conditions on that date, but had not mandated a re-hearing on the conditions and the Board would most likely not complete its hearing on May 24, 2017. It was agreed that the Board on May 18, 2017 did not invoke its emergency powers, but instead imposed the conditions pending its hearing on this matter. The Appellant filed a motion for a stay and this matter came for hearing on May 22, 2017 before the undersigned in her capacity as Hearing Officer delegated by the Director of 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).

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<sup>3</sup> The Appellant voluntarily closed on May 14, 2017 and was open on May 15, 2017.

### 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. See also *AJC Enterprises; Schillers; and Furtado v. Sarkas*, 373 A.2d 169 (R.I. 1977).

In a denial of a renewal matter,<sup>4</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 causational 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.” In *Stage Bands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328508 (R.I. Super.), there were three (3) extreme disturbances in one night including a shooting. In citing to *A.J.C.*, the Superior Court in *Stage Bands* found that a reasonable inference could be made that the shooting outside was connected to events inside the club.

A licensee is responsible for disorderly conduct inside its premises and disorderly conduct outside its premises that can be directly or indirectly linked to activities inside the premises.

#### IV. DISCUSSION

It is undisputed that shots were fired outside of the Appellant at about 1:15 a.m. on May 14, 2017. Shell casings were recovered from the Appellant’s parking lot. Apparently there was an argument among a group of people outside of the Appellant that moved toward the parking lot and ended in shots being fired (no injuries).<sup>5</sup> It has not been determined whether this argument and the shots being fired can be linked directly or indirectly to something that occurred inside the Appellant’s premises. At the May 24, 2017 hearing, it is expected that there will be a witness who will testify on the events of that evening.

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<sup>4</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 of R.I. Gen. Laws § 3-5-23. *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61 (R.I. 1971).

<sup>5</sup> The Appellant provided a rough draft of a transcript of the Board’s May 18, 2017 hearing.

The Appellant argued that there was no basis for an emergency finding that the hours should be curtailed to 1:00 a.m. Additionally, the Board ordered that the Appellant must close if a detail cannot be filled. The Appellant argued that it is unfair that it is forced to close if the City cannot fill a detail and that the Department can order the City to fill the detail or allow it to open without a detail.

The Board argued that as a witness could not appear on May 18, 2017, the Board continued the hearing to May 24, 2017 (after testimony was taken on May 18, 2017) and imposed the conditions pending the outcome of the hearing. The Board argued that the detail was ordered because of public safety issues and the Board has no control over the filling of details. The Board argued that the Appellant only was granted a six (6) month probationary BVX license about one (1) month ago which will expire at the end of six (6) months and then the Board will review it.

The City argued that while May 16, 2017 was an emergency order, the Board had on May 18, 2017, the right to start a hearing and put conditions on a licensee pending the hearing. The City argued that the Appellant did not have any problems for two (2) years with its 1:00 a.m. closing, but now with its new probationary late night license, there has been a shooting.

In response, the Appellant stated that the review of the probationary BVX license is scheduled for July 30, 2017, but Board cannot limit hours when it does not have any evidence.

This matter is scheduled for a continuation of hearing on May 24, 2017 at which time the Board will hear evidence regarding the origins of the disturbance. The parties did not believe that a final decision would be made that day, but the Board must re-visit on that day the issue of the detail and hours.

The Appellant argued that it is unfair that the Board order it to close if a detail is not filled. The Appellant believes that the Department has authority to order the detail filled.

At this point, the Department will not rule on the issue of the detail and hours, but will wait for the Board to address these issues at the hearing on May 24, 2017 after hearing from the witness(es).


**V. RECOMMENDATION**

Based on the forgoing, the undersigned recommends the following:

At the May 24, 2017, the Board after hearing further testimony shall revisit its order regarding the conditions imposed on the Appellant pending the hearing in this matter.

Depending on the Board's decision, the Department will tentatively schedule a stay hearing, if deemed necessary, for May 25, 2017 at 9:30 a.m. at the Department of Administration, One Capitol Hill, Providence, RI.<sup>6</sup>

Dated: MAY 23, 2017

  
Catherine R. Warren  
Hearing Officer

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<sup>6</sup> After the Board's decision, if the Appellant no longer wishes to request a stay, the Appellant may notify the parties cancel the hearing.

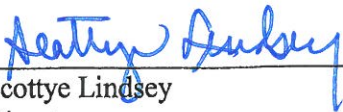


**INTERIM ORDER**

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: 5/23/17

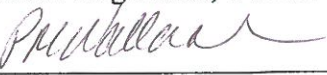
  
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Scottye Lindsey  
Director

**NOTICE OF APPELLATE RIGHTS**

**THIS ORDER IS REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35-15(a) 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 A PETITION DOES NOT STAY ENFORCEMENT OF THIS ORDER.**

**CERTIFICATION**

I hereby certify on this 23 day of May, 2017 that a copy of the within Order was sent by electronic delivery and first class mail, postage prepaid, to the following: Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903 Mmartone@providenceri.com, Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, RI 02904, peter330350@gmail.com, and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 02889 ldatty@gmail.com 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

  
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