

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

FabCity Cigar Lounge, Inc. d/b/a	:	
FabCity Cigar Lounge,	:	
Appellant,	:	
v.	:	DBR No.: 22LQ005
	:	
Board of License Commissioners for the,	:	
City of Pawtucket,	:	
Appellee.	:	

DIRECTOR'S ORDER

The Director modifies the Hearing Officer's recommendation and issues this order with respect to the motion for stay filed by FabCity Cigar Lounge, Inc. d/b/a FabCity Cigar Lounge ("Appellant").

Sections I – VII of the Hearing Officer's recommended order attached hereto are hereby incorporated herein by reference. Considering public safety concerns, the fifth and sixth sentences of Section VIII of the recommended order are modified and replaced with the following:

"Thus, the stay will be conditioned on an 11:00 p.m. closing every night and police detail (two-person) at night (approximately 9:00 p.m. to midnight) on Friday and Saturday nights and any night before a State holiday and on State holidays. Furthermore, prior to the Appellant beginning to serve alcohol again, the Appellant must provide the Board with its written safety plan, including

violence prevention and response procedures and notify the Board of a contact person responsible for ensuring the plan has been implemented.⁶”



Dated: February 22, 2022

Elizabeth M. Tanner, Esq.
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES AN INTERLOCUTORY ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-15. 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 APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 22nd day of February, 2022, that a copy of the within Order was sent by first class mail, postage prepaid, and by electronic delivery to the following: Mark P. Welch, Esquire, 141 Power Road, Suite 106, Pawtucket, RI 02896 mark@bwlawri.com, Christopher M. Mulhearn, Esquire, Law Offices of Christopher M. Mulhearn, 1300 Division Road, Suite 304, West Warwick, RI 02893 cmulhearn@mulhearnlawri.com, and Frank Milos, Esquire, City Solicitor, 137 Roosevelt Avenue, Pawtucket, RI 02860, fmilos@pawtucketri.com, and by electronic-delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920 pamela.toro@dbr.ri.gov.

Diane L. Paravisini

⁶ The parties may agree to a modification of the stay if they chose. The parties could also enter into a settlement if they desire.

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

FabCity Cigar Lounge, Inc. d/b/a	:	
FabCity Cigar Lounge,	:	
Appellant,	:	
	:	DBR No. 22LQ005
v.	:	
	:	
Board of License Commissioners for the	:	
City of Pawtucket,	:	
Appellee.	:	

ORDER RE: MOTION FOR STAY

I. INTRODUCTION

This matter arose from a motion for stay and appeal filed on February 10, 2022 by FabCity Cigar Lounge, Inc. d/b/a FabCity Cigar Lounge (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the February 9, 2022 decision by the City of Pawtucket, Board of License Commissioners (“Board”) to revoke the Appellant’s Class BV liquor license (“License”). A hearing on the motion for stay was heard on February 14, 2022 before the undersigned¹ with the parties represented by counsel

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

¹ Pursuant to a delegation of authority by the director of the Department. Due to the Covid19 pandemic, the hearing was held remotely.

function. *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 *Board of Police Com'rs v. Reynolds*, 133 A.2d 737 (R.I. 1957). It is noted that the Appellant raised what it felt were due process and other errors by the Board at the Board hearing. However, 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 to the Department hearing. *Hallene*; and *Cesaroni*.

III. THE 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, or permits any gambling or unlawful gaming to be carried on in the neighborhood, or permits any of the laws of this state to be violated in the neighborhood, in addition to any punishment or penalties that may be prescribed by statute for that offense, 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 states in part as follows:

(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:

- (1) Breach by the holder of the license of the conditions on which it was issued;
- or
- (2) Violation by the holder of the license of any rule or regulation applicable;
- or
- ***
- (4) Breach of any provisions of this chapter.

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. *Cesaroni*. The statute also forbids a licensee from permitting any laws of Rhode Island from being violated. 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 v. Pastore*, 473 A.2d 269 (R.I. 1984); *Schillers*; and *Furtado v. Sarkas*, 118 R.I. 218 (1977).

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).

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* (upholding revocation 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 with licensee failing to call the police 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*.

IV. STANDARD FOR ISSUANCE OF A STAY

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (R.I. 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 parties agreed the Appellant was licensed in approximately October, 2019 and has no disciplinary history.

VI. ARGUMENTS

The Appellant argued that it has a substantial likelihood of success on the merits in that a review of all the videos will show that this was a targeted shooting, and it did not arise from any disorderly conduct inside the establishment. It argued that without a stay, it will suffer irreparable harm due to loss of patrons, employees, and money. It argued that no substantial harm will come to interested parties, and there will be no harm to the public interest if a stay is granted.

The Board argued there is a nexus between what happened inside and the shootings outside, and there is an issue of public safety due to the shootings. The Board argued that if a stay is granted, a 12 a.m. closing should be imposed every night and a two (2) person police detail be on from 9:00 p.m. to 1:00 p.m. every night.

The Appellant argued that it is only a 30 to 40 person cigar bar so that such a detail requirement would be financially draining. The Appellant argued that the hours should not be reduced as a condition of a stay but if they were, it should only be on weekdays and not weekends, and there be a one (1) person police detail at the weekend.²

VII. DISCUSSION

The information received by the undersigned is based on representations of the parties. The undersigned did not have a transcript of the Board hearing; however, an audio of the Board's hearing for February 9, 2022 was available online, and the undersigned listened to that recording.³

This matter relates to a shooting outside the Appellant in the early hours of Monday, January 24, 2022, that resulted in the death of an individual and the injury of another. It was agreed that the Appellant had voluntarily closed between January 24, 2022 to February 9, 2022.⁴ It was agreed that the Appellant is a 30 to 40 person cigar bar.

At the Board hearing, Captain David Holden testified that the police obtained the Appellant's security video and testified as to what he saw on the video. The Board's decision was made without it viewing any security video and on the basis of Captain Holden's testimony

² The Board indicated that the City only provides two (2) person police details.

³ For the link to the hearing: <https://clerkshq.com/Pawtucket-ri>. It is noted that the audio was not audible in all parts. It should be noted that prior to the stay hearing, the undersigned received a letter from the Mayor of Pawtucket concerning this matter. However, said letter or any media reports, do not have bearing on the issue of a stay in that the stay is based on the parties' representations, the hearing below, and the applicable law.

⁴ At the February 9, 2022 hearing, the Board revoked the Appellant's liquor license. It is noted that no other license held by the Appellant was revoked so that it could still operate with its victual and other licenses. In other words, the Appellant could open at this time but without serving alcohol. The Department only has jurisdiction over liquor licenses.

regarding his viewing of the videos. The Board's and Appellant's attorney were only able to view limited portions of the videos.⁵

The parties agreed that the decedent and the other victim had entered or were inside the bar at approximately 10:30 p.m. on Sunday, January 23, 2022. It was agreed that the shooter entered the bar by himself at around midnight and smoked hookah at the bar. The City represents there was a physical bump between the shooter and one of the victims by the bar at about midnight, and then for the next 45 minutes there were on and off verbal exchanges. The Appellant disagreed that there was any physical touching. The parties represented that there were some verbal altercations or something where the bartender, security guard, and manager stepped between people and separated them. The decedent left the bar and came back inside prior to everyone leaving. The City agreed that there was no brawl inside. Everyone then exited together. The shootings took place outside at apparently approximately 1:45 a.m.

The Board argued that the Appellant should have separated the parties and had them exit by separate exits. The Appellant represented that when the parties exited, the video shows that the shooter tried to clear people away to their cars so that while there was a group outside that engaged in a physical altercation, the shooter was not one of those people.

The Appellant represented that when the shooter initially entered the bar, he left a female companion outside in the car with the car running. The Appellant represented that the video shows that when the shooter then exited, he went to the car and retrieved what must be the gun and then shot his two (2) victims. The Appellant represented that the woman in the car followed the shooter in the car and drove off with him after he shot his victims. The Appellant argued that no gun got inside the establishment.

⁵ The parties agreed to try to enter into a protective order so that all of the videos may be entered into evidence at the full hearing.

The Appellant indicated that the decedent and other victim both were regulars on Sunday night at the establishment. The Appellant argued that a full viewing of the videos will show that the shooter went into the bar to target the decedent and the other victim, and the shooting outside did not arise from any altercation inside. The Appellant argued there was no nexus between the shooting outside and what happened inside.

The Board argued there were tensions inside whereby the manager, bartender, and security guard tried to separate the people. The Board argued that the Appellant failed to take action by calling the police or separating the parties or ejecting the parties or party. The Board argued there was a nexus in that the outside shootings arose from the inside altercation, and there need not be a physical altercation inside for it to be linked directly or indirectly to outside events. The City argued that this is the opposite of *Vibe Lounge and Hookah Bar, Inc. v. City of Pawtucket, Board of Licenses* DBR No. 21LQ004 (9/20/21) where the owner ejected a patron after a verbal exchange and then nearly two (2) hours later the ejected patron shot another patron after that patron left the nightclub. In *Vibe*, the altercation did not spill outside and there was an almost two (2) hour gap before the shooting so there was no link between the inside and outside events.

In a denial of renewal matter, *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.”

Here, a full viewing of the videos has not occurred nor has the undersigned heard any testimony. The Appellant argued that while there may have been some tensions inside that could be considered disorderly conduct, they cannot be connected to the shooting outside as that was a

targeted shooting by the shooter looking for the victims. The Board disagreed and argued there was a nexus between the inside and outside events. Thus, there will be an issue at hearing regarding whether the Appellant can be directly or indirectly linked to the shootings.

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. In this matter, it cannot be ascertained which party will prevail without a full hearing on what happened inside and then outside in terms of the shooting. If a stay is not granted for the revocation, the Appellant will not have a meaningful appeal.

VIII. RECOMMENDATION

It is discretionary to issue a stay in order to maintain the *status quo* pending an appeal. In this matter, it cannot be ascertained which party will prevail without a full hearing on what happened inside and then outside. If a stay is not granted for the revocation, the Appellant will not have a meaningful appeal. The granting of a partial stay maintains the *status quo* pending the full hearing. Thus, the stay will be conditioned on a midnight closing every night and police detail (two-person) at night (approximately 9:00 p.m. to 1:00 a.m.) on Friday and Saturday nights and any night before a State holiday and on State holidays. Furthermore, prior to the Appellant beginning to serve alcohol again, the Appellant must provide the Board with its written safety plan, including violence prevention and response procedures.⁶

Dated: February 16, 2022

/s/ *Catherine R. Warren*

Catherine R. Warren
Hearing Officer


⁶ The parties may agree to a modification of the stay if they choose. The parties could also enter into a settlement if they desire.

INTERIM ORDER

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

____ ADOPT
____ REJECT
 X MODIFY (See attached)

Dated: 02/22/2022



Elizabeth M. Tanner, Esquire
Director

A hearing will be scheduled on a mutually convenient date to be determined by the parties.⁷

NOTICE OF APPELLATE RIGHTS

THIS ORDER CONSTITUTES AN INTERLOCUTORY ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-15. 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 22nd day of February, 2022 that a copy of the within Order was sent by first class mail, postage prepaid and by electronic delivery to the following: Mark P. Welch, Esquire, 141 Power Road, Suite 106, Pawtucket, R.I. 02896, Christopher M. Mulhearn, Esquire, Law Offices of Christopher M. Mulhearn, 1300 Division Road, Suite 304, West Warwick, R.I. 02893 and Frank Milos, Esquire, City Solicitor, 137 Roosevelt Avenue, Pawtucket, R.I. 02860, and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.



⁷ Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant is responsible for the stenographer.