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

401 Nightlife, LLC d/b/a Pregame Lounge, Appellant,	:	
v.	:	**DBR No. 22LQ006**
City of Cranston, City Council, Safety Services Committee, Appellee.	:	

ORDER RE: MOTION FOR STAY

I. INTRODUCTION

This matter arose from a motion for stay filed on April 5, 2022 by 401 Nightlife, LLC d/b/a Pregame Lounge ("Appellant") with the Department of Business Regulation ("Department") pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on April 1, 2022 by the City of Cranston, City Council, Safety Services Committee ("Board") revoking the Appellant's Class BV liquor license ("License").[1] A remote hearing on the motion to stay was heard on April 11, 2022 before the undersigned who was delegated to hear this matter by the Director of the Department.

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.*

[1]At the Board hearing, the Board also revoked the Appellant's victual and entertainment licenses. Appeals to the Department can only relate to the liquor license held by the Appellant. See *El Nido v. Goldstein*, 626 A.2d 239 (R.I. 1993) (victualing license is a separate and distinct license from a liquor license). The Appellant has a Class B liquor license which is conditioned on holding a victualing license.

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. *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. THE BASIS FOR REVOCATION

R.I. Gen. Laws § 3-5-23 governs disorderly conduct. It 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.

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). 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 (R.I. 1966). See also *Scialo v. Smith*, 99 R.I. 738 (R.I. 1965). See also *A.J.C. Enterprises*; *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. *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); *Pakse* (upholding revocation when had four (4) incidents of underage sales within three (3) years); *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 DISICIPLINE

The parties agreed that the Appellant was licensed in January, 2020 and previously has not had its liquor licensed formally sanctioned.

VI. ARGUMENTS

The Appellant argued that it had a strong likelihood of success on the merits because there is no evidence directly or indirectly linking the shooting outside its premises to anything that occurred inside. It argued that some patrons left about midnight and stood outside, and the shooting was 22 minutes later when a Cheverolet Tahoe drove by and people inside fired at the patrons outside. The Appellant did not agree that the patrons who fired back already had the guns on them or had the guns inside the club prior to exiting. The Appellant argued that based on prior

case law, there may be a security failure that night, but the shooting cannot be linked directly or indirectly to the Appellant. It argued that it will be irreparably harmed in terms of loss of business and good will if a stay is not issued.

The Board argued that there may not be direct evidence regarding the shooting but there is circumstantial evidence to link the shooting to inside the club. It argued that while there is no evidence of something happening inside, one can draw an inference that something happened inside for patrons to exit at midnight – which the manager thought odd - and wait outside. The Board argued that it is hard to believe that the patrons who returned fire from the sidewalk did not have guns inside the club prior to exiting. It argued the only reasonable inference is that the patrons had some type of communication with the people in the car and went outside to wait for them. It did not agree that there need to be some type of incident inside but rather that there only needs to be a connection. It argued that as the case law notes, such a requirement is an onerous burden on the licensee. The Board argued there a danger as the shootout was in a residential area.

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 April 1, 2022 was available online and the undersigned listened to that recording.[2]

At the Board's hearing, a police officer testified as to the information received via videos and upon the police investigation. The parties provided the undersigned with police reports and of videos taken outside showing the shooting outside the club.

The police report indicated that at midnight a group of patrons exited the club and then stood in front of the club and also parked in front of the club was a black BMW. At about 12:22

[2] See https://www.cranstonri.gov/about/city-council/ (follow links to the page for online postings of hearings).

a.m., a Chevrolet Tahoe drove by and its occupants fired at the patrons standing outside. The police report indicated that one of the patrons standing outside took a gun from his waistband and fired back and then got into the black BMW. The police report also indicated that the manager or somebody at the club (name was redacted) indicated it was unusual for people to leave at midnight as that is a peak hour.

The Board also provided the undersigned with the videos shown at the Board hearing. These two (2) short videos showed the shooting from the outside. The undersigned reviewed the videos and without knowing that a shooting occurred would not have realized that is what happened when the Tahoe drove by. It appeared that one of the patrons outside fired back from behind and over what was identified as a BMW. That person then gets into the BMW and drove off. The police report indicated that people were already inside the BMW; however, it appears the person who returned fire got in the driver's side of the car. The BMW had been parked by the curb. How long the BMW was parked there – e.g. before or after midnight - is not known to the undersigned as both videos start very close in time to when the Tahoe appears.

In a denial of renewal matter,[3] *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."

[3] 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).

In terms of disorderly conduct, case law speaks of the conduct "within" the premises. *Cesaroni* speaks of disorderly conduct that occurs within premises where liquor is dispensed under a license that causes either directly or indirectly conditions in the neighborhood that annoy the neighborhood (e.g. disorderly conditions). *A.J.C. Enterprises* speaks of making an inference that the disturbance outside had their origins within the premises. In *Stage Bands*, there were three (3) extreme disturbances in one night including two (2) inside and a shooting outside. In citing to *A.J.C. Enterprises*, the Court upheld the Department's decision for revocation finding that the shooting outside was connected to events inside the club.[4] The Court found direct evidence

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[4] The Court in *Stage Bands* found as follows:

> At the hearings, testimony was presented to the DBR's hearing officer. The DBR's decision lays out the facts in extensive detail, and this Court adopts those facts. (*Decision* DBR No. 06-L-0147.) Essentially, those facts are that the Hartford Avenue pedestrian gate was not locked. A disturbance involving at least ten people occurred inside the club at approximately 1:50 a.m. on July 29, 2006. The house lights were not turned on and the loud music was not turned off during the disturbance inside the club. A second disturbance involving at least five people occurred inside the club. The testimony from all police representatives was credible, including that of Officer Mulligan. A third disturbance occurred outside the club on July 29, 2006. This disturbance involved five to eight people who were kicking a subject who was lying on the ground and had been shot in the head. ***
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> In this case, the record indicates that three disturbances occurred within a matter of minutes: two inside Giza and one outside, culminating in a victim being shot in the head and kicked while his blood pooled on the ground around his head. [footnote omitted] Giza argues in its appeal that there is no connection between the shooting in the parking lot and the club itself. Therefore, it concludes, the DBR revoked the license without any evidence of disorderly conduct perpetuated by those inside Giza.
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> Even if there were no direct connection between the parking lot and the shooting, the case law of Rhode Island has made clear that a reasonable inference that the cause culminated inside that establishment can be made when a disturbance occurs immediately outside a drinking establishment. *See A.J.C. Enterprises v. Pastore,* 473 A.2d 269 (R.I. 1984). "[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." *Id.* at 275.
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> In this case, the facts are much stronger than a reasonable inference that the shooting outside was somehow connected to events inside Giza. There was uncontradicted testimony from Detective Green that the victim was inside the club before he was shot. He and his friend engaged in an altercation inside the club and later, outside the club, engaged in another altercation. (Tr. Oct 5, 2006 at 54-56.) Additionally, all testifying witnesses indicated that the victim's body was located inside the fenced in parking lot of the club. Furthermore, there was testimony from many of the witnesses at the DBR hearing that the door to Giza emptied directly into the parking lot. There is only one entrance/exit into the lot. It is more than reasonable for the DBR to conclude that the fights that culminated inside Giza and the shooting that occurred in the fenced in parking lot outside Giza occurred as a result of the activities inside Giza. *See, A.J.C. Enterprises* at 275.

between the inside events and the shooting outside. In other words, in *Stage Bands*, there did not need to be an inference made of an indirect connection between an inside event and an outside event as permitted by *Cesaroni* and *A.J.C. Enterprises*. Nonetheless, those Supreme Court cases require that something happens inside from which an inference can be made of the connection. The conduct "within" (inside) directly or indirectly causes something outside.

In *The Vault Lounge, LLC v. City of Providence, Board of Licenses*, DBR No.: 16LQ008 (9/14/16), a patron was ejected from a club and did not leave the area and tried to get back inside so that the club was indirectly responsible for the patron's shooting 18 minutes after the ejection. In *Ocean State Hospitality, Inc. d/b/a Fatt Squirrel v. Providence Board of Licenses*, DBR No.: 16LQ002 (3/31/16), a patron was ejected and a crowd followed the patron outside and milled around with some dispersing and some staying. Eight (8) minutes after the patron was ejected, a shooting occurred (no injuries) and a patron was punched outside. With the large crowd of people exiting the Appellant's as a result of the ejection, it was reasonable to infer that the shooter was connected to the crowd that spilled out of Appellant and that the victim who had left the club was punched as a result of the mass exit from the club.

In contrast, in *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ022 (6/24/14), two (2) men were ejected for being drunk and belligerent. When they were outside, a car drove by and the driver fired a gun in the air. The police did not identify a victim or suspects. While the two (2) incidents happened closed together, there was not enough evidence to make a finding that the shooting arose from the disturbance in the club. In *D. Liakos d/b/a Van Gogh v. Providence Board of Licenses*, DBR No.: 16LQ011 (10/31/16), there was no evidence of any disturbance inside the bar that spilled outside where it culminated in the fight.

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.

No one disputes that a drive by shooting with return fire is dangerous and criminal and not the type of activity that anyone would want either near a club or elsewhere. However, the issue before the undersigned is purely a legal issue regarding the Appellant's responsibility, if any, for the shooting.

There is a very strict requirement that makes a licensee responsible for conduct inside 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. The case law is consistently clear that a liquor licensee is responsible for conduct inside and conduct outside that can be directly or indirectly inferred to arise from inside. In order for the Appellant to be responsible there must be some kind of conduct for which the club is responsible for and from which it can be inferred the fighting arose. *A.J. C. Enterprises* and *Cesaroni.*

There is no doubt that there was a shooting outside the Appellant's. However, a full hearing has not been held to review what happened inside the Appellant's prior to the patrons exiting at midnight.[5] It is unknown whether the initial shooters were patrons of the Appellant's. If the shot at patrons went outside to the meet or wait for the Tahoe people, what precipitated their exit? Did they receive a text from one of them while inside the club and go outside? Or did they see the Tahoe people inside? In other words, there needs to be a hearing on the events that evening and what can be shown and what can be inferred and whether the Appellant can be directly or indirectly linked to the shooting.

[5] The Appellant represented that there was video from inside the establishment from that night that would show that nothing occurred inside.

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. The Appellant has been closed since at least April 1, 2022.

VIII. RECOMMENDATION

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. The stay will be conditioned on a midnight closing and police detail (two-person) at night (approximately 10:00 p.m. to 1:00 a.m.) on Fridays, Saturdays, and Sundays, and nights before state holidays. In addition, all people entering the premises must be wanded prior to entry (as well as subject to pat downs). 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. The parties may agree to modify this stay order if they choose.

Dated: April 13, 2022

Catherine R. Warren
Hearing Officer

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:

___X___ ADOPT
_____ REJECT
_____ MODIFY

Dated: 04/14/2022

Elizabeth M. Tanner, Esquire
Director

A hearing will be scheduled on a mutually convenient date to be determined by the parties.[6]

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 14th day of April, 2022 that a copy of the within Order and Notice of Appellate Rights were sent by email and first class mail, postage prepaid, to the following: John M. Verdecchia, Esquire, Law Office of John M. Verdecchia, 400 Reservoir Ave., Ste 1C, Cranston, R.I. 02920 and Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, R.I. 02903, and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Diane L. Paravisini

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