

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

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<b>Truth VIP Lounge, LLC d/b/a Revel Lounge, Appellant,</b>	:	
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	:	<b>DBR No. 21LQ009</b>
<b>v.</b>	:	
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<b>City of Providence, Board of Licenses, Appellee.</b>	:	
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**DECISION**

**I. INTRODUCTION**

On or about December 9, 2021, the Providence Board of Licenses (“Board” or “City”) revoked the Class BVX liquor license (“License”)<sup>1</sup> of Truth VIP Lounge, LLC d/b/a Revel Lounge (“Appellant”). Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed the Board’s decision to the Director of the Department of Business Regulation (“Department”). The undersigned was designated by the Director of the Department to hear the appeal. The Appellant filed a motion to stay the revocation to which the Board objected. By order dated December 21, 2021, the Department denied the motion for stay. A hearing was held on February 11, 2022.<sup>2</sup> The parties rested on the record and made oral arguments, and the Appellant also submitted a written argument.<sup>3</sup>

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<sup>1</sup> R.I. Gen. Laws § 3-7-7 provides that a town or city may grant a Class B licensee a 2:00 a.m. closing time on Friday and Saturday nights. An extended license is treated as a separate license. See *28 Prospect Hill Street, Inc. v. Gaines*, 461 A.2d 923 (R.I. 1983). The “X” refers to the Appellant’s extended license.

<sup>2</sup> The record was left open to February 18, 2022 for the Appellant to submit any further exhibits in relation to its insurance coverage and planned security system. The Appellant submitted information regarding its insurance coverage by email on February 15, 2022. That document is marked and admitted as Appellant’s Exhibit Seven (7).

<sup>3</sup> The undersigned received the stenographic transcript of hearing on April 5, 2022.

## **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.*

## **III. ISSUES**

Whether to uphold or overturn the Board's revocation of the License.

## **IV. MATERIAL FACTS AND TESTIMONY**

Jasmine Washington ("Washington") testified on behalf of the Board. She testified that on October 16, 2021, she and her friends went to the Appellant's and arrived about 11:00 or 11:30 p.m. and entered through the front door. City's Exhibit One (1) (photograph of front door from outside). She testified she walked through a metal detector and then was patted down or wanded by a female, and bags were checked and everyone in her group was subject to this protocol. She testified the club is on two (2) levels, and they went to a table on the first floor near the dance floor. She testified at one point she felt a push, turned, and heard five (5) gun shots, and then heard two (2) very close gun shots. She testified she did not see the shots but heard them causing ringing in her ears, and she briefly lost hearing. She testified she crouched down because she did not know where the shooter was, and she was trying to get away when she was shot in both legs. Upon being shown video from inside the club at the time of the shooting, she identified herself on the video. City's Exhibit Two (2) (video). She testified that in the video, she was at a table that was located at about 12 o'clock on the face of a clock and was sitting with her back to the dance floor, and she felt something bumping and that was when the shots went off. On cross-examination, she testified that she was inside the club when she realized she had been shot.

Officer Eder Delgado, Providence Police Department, testified on behalf of the Board. He testified the Appellant is on his beat, and on the night of October 16, 2021, he responded to shots

fired. He testified that when he arrived, people were running out of the club. He testified the club is on two (2) levels, and he went to the side door which accesses the second level. He testified he took a left down the stairs where he found someone shot by the stairs. He testified the man told him he had been shot, and his shirt was covered in blood. He testified he got a call about a victim outside and he went outside, and a man was collapsed near the woods past the side door. He testified that man was soaked in blood, and he could see a gunshot wound. He testified that after rescue came, he went to the hospital and then came back to the club. He testified that there was blood on the dance floor. City's Exhibits 3A to 3F (photographs of inside). On cross-examination, he testified that he completed a report which is included in the police report.

Detective Ludwig Castro, Providence Police Department, testified on behalf of the Board. He testified he responded to a shots fired call on the night in question, and when he arrived officers were on the scene. He testified the side door was unlocked, and he was told by the manager<sup>4</sup> that the door was unlocked and ajar because a Fire Marshal had said to do that so the hookah smoke in the club could disperse,<sup>5</sup> and when the club did that, two (2) security staff members would be put on the door. He testified the side door was open, and one could see a large orange fan. City's Exhibits 4(A) and 4(B) (picture of said door with large fan). He testified a security guard told him the door was ajar and the shooter shot from the door. He testified that it would be impossible to shoot from outside the door over the short second floor wall down into the dance floor. He testified that the dance floor cannot be seen from the side door entrance.

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<sup>4</sup> Detective Castro testified that he spoke to a woman, Johanne Arias, who is the manager of the club. However, Howard Silverman, the Appellant's owner, testified that she has not been the manager for two (2) years but rather manages the social media for the club.

<sup>5</sup> Detective Castro testified that he recently spoke to the Fire Marshal's office, and it was his understanding that the Fire Marshal had not given the club such instructions about opening the door.

Howard Silverman (“Silverman”) testified on behalf of the Appellant. He testified that he owns the Appellant and was in the building that night and heard the gunshots. He testified the side door is never unattended. He testified there is a big fan there, and it is usually pushed up against the door so a person could not get in that way. He testified that he puts a security guard on either side of the fan when the door is open. He testified that the door is monitored by him since he has a ring alarm so that when he is noticed on his phone that the door is open, he calls the manager. He testified that night, he got a notice about the door and asked the manager who told him that it was the fan. He testified that the club is open from 10:00 p.m. to 2:00 a.m. and people do not usually come until about midnight.

Silverman testified that he previously (a few months ago) told the owner of the Appellant’s security firm, Night Life, that he would not pay them if they did not provide someone for the side door. He testified that he had decided in June, 2021 to provide his own security since he was unhappy with Night Life. He testified that in anticipation of this, in the summer, he paid extra for insurance coverage for assault and battery. Appellant’s Exhibit Seven (7). He testified that he hired people to be in charge of indoor security and outdoor security.

Silverman testified that October 16, 2021 was the last night he was using Night Life. He testified that on Thursday (October 14, 2021), he had a disagreement with the company’s owner because the company was billing him for full staff when not all staff had showed up. He testified that on the Saturday, October 16, 2021, Night Life was to provide 14 staff but the company only sent eight (8) staff so they were short six (6) security staff short that night. He testified that the club had a capacity of 200 and using the rule of thumb of one (1) security staff per 35 patrons that he had in his security plan, he felt that he would be OK that night. He testified that he planned to

have his own security people the following week. He testified that he previously never had a disorderly conduct and had over 200 events without a single disorderly conduct.

Silverman testified there was very strict security by the front door. Appellant's Exhibit Three (3) (security plan). He testified that at position A, a person would check ID's and at position B, the patrons would empty pockets to be checked by another staff member. He testified that after going through a metal detector (position C), the patron would go to position D to be wanded by another staff member. He testified that at position E, the patron would be patted down by another staff member. He testified that no one with a gun could get inside. He testified that he spent more money on security than any other club, and his club was one (1) week from having its own security.

On cross-examination, Silverman did not deny there was a shooting. He testified that he monitors the door and did so that night and did not see anyone on the side door. He testified that he monitored the door by his cell phone and not visually. He testified the system reports when the door opens but he has no knowledge of anyone stationed at the side door. He testified there were two (2) guards at the side door. He testified that at approximately 12 midnight or 12:15 a.m., the ring showed the side door opening and then closing temporarily at approximately 1:00 a.m. for a minute and then opening up again. He testified that he does not know if the security guards were there that night which is why he wants to hire his own security. He testified that he would be able to put staff on the door even when short handed because at 1:00 a.m., the front door is closed down and the front door staff become available and can be moved around. He testified that the protocol is as soon as the fan is put on, one (1) security guard is posted inside and one (1) is posted outside. He testified that the fan was put up that night about 12:15 a.m., and the fan is about four (4) feet by three (3) and half feet so would be hard to get by.

Silverman testified after the issues in August, 2021,<sup>6</sup> the Board accepted his plan to have 14 security members and he put in the metal detecting machine and hired another staff member for that machine. He testified that he also needed to have security cameras put in. He testified that when reopening, there were supposed to be 14 security guards. He testified that he plans to put in a new lighting system. He testified that he has many cameras in his club but the police took his server after the August incident so those cameras are not hooked up, and he had to use the ring camera system. Appellant's Exhibit Five (5) (old security plan).<sup>7</sup>

## V. DISCUSSION

### A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must

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<sup>6</sup> It is noted that no discipline was imposed as a result of the August, 2021 issues.

<sup>7</sup> Because of the incidences in August, 2021, the Appellant's server for its security system camera were removed by the police. Silverman testified he was using the ring security cameras instead of his old system and blamed the police for not returning his camera system. On rebuttal, Detective Jeremy Doucette, Providence Police Department, testified on the Board's behalf. He testified the police were unable to access the Appellant's Cox Cable camera security system, so it was sent to the FBI. He testified that the FBI has the Appellant's server, and Silverman was aware of that. He testified that Cox told the police that Silverman had not paid his bills so the police could not return it to him anyway. Silverman further testified Cox was over-priced, and he planned to upgrade his system to a new 64 camera system.

be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

### **B. The Appeal Before the Department**

After the end of prohibition of liquor within the United States, Rhode Island implemented a new system of statewide control of liquor coupled with local authority to grant certain licenses. See P.L. 1933 ch. 2013. The intent of the new system was to eliminate the old unsupervised system of local regulation that resulted in a lack of uniformity and grave abuses that seriously affected the public welfare and instead vested broad powers of control and supervision in a state system. *Baginski v. Alcoholic Beverage Commission*, 4 A.2d 265 (R.I. 1939).

In keeping with the Department's statewide oversight and mandate to "establish a uniformity of administration of the law for purpose of promoting temperance throughout the state," the Department has broad statutory authority to review liquor appeals. *Baginski*, at 268. See *Tedford et al. v. Reynolds*, 141 A.2d 264 (R.I. 1958). *Baginski* held that since the Department<sup>8</sup> is a "superlicensing board," it has the discretion to hear cases "*de novo* either in whole or in part." *Baginski*, at 268. Thus, an appeal may hear new testimony in part and/or may rely on the hearing before the local licensing authority. However, as the review is *de novo* the parties start afresh during the appeal but the Department has the discretion to review the local authority partially *de novo* and partially appellate as seen fit. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Since the Department is charged with ensuring statewide uniformity, it follows that the statutory scheme grants the Department the authority to revise or alter decisions of local boards. *Id.* Further, 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

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<sup>8</sup> At that time the alcoholic beverage commission.

consequence. *Id. Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964) (Department's jurisdiction is *de novo* and the Department independently exercises the licensing function).

The outcome of an appeal is a decision whether to uphold, overturn, or modify a licensing board's decision. Thus, this appeal is not bound by the Board's reasons for revocation but whether the Board presented its case for revocation before the undersigned. The undersigned will make her findings on the basis of the evidence before her and determine whether that evidence justifies said revocation.

As the Department has statewide authority and indeed the statutory intent is to ensure statewide consistency, 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). Thus, the unevenness in the application of a sanction does not make it unwarranted in law. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation for a series on infractions). However, a sanction must be proportional to the violation and if there is an excessive variance in a sanction than it will be found to be arbitrary and capricious. *Jake and Ella's* 2002 WL 977812 (R.I. Super.). In reviewing local authorities' decisions, the Department ensures that local authorities' sanctions



are not arbitrary and capricious and that statewide such sanctions are consistent and appropriate (otherwise sanctions would be arbitrary).

In order to suspend or revoke a liquor license, there must be a showing that the holder breached an applicable rule or regulation. In order to impose discipline, cause must be found. *Chernov Enterprises, Inc. v. Sarkas*, 109 R.I. 283, 287 (1971) found that cause shall mean, “we have said that a *cause*, to justify action, must be *legally sufficient*, that is to say, it must be bottomed upon substantial grounds and be established by legally competent evidence.” (italics in original).

An appeal proceeding held pursuant to R.I. Gen. Laws § 3-7-21 is considered a civil proceeding. *Board of License Commissioners of Tiverton v. Pastore*, 463 A.2d 161 (R.I. 1983). In civil proceedings, unless otherwise specified, the burden of proof generally needed for moving parties to prevail is a fair preponderance of the evidence. *Jackson Furniture Co. v Lieberman*, 14 A.2d 27 (R.I. 1940). See *Parenti v. McConaghy*, 2006 WL 1314255 (R.I. Super.); and *Manny’s Café, Inc. v. Tiverton Board of Commissioners*, DBR LCA TI-97-16 (11/10/97) (Department decision discusses burden of proof for proceedings held pursuant to R.I. Gen. Laws § 3-7-21). Thus, in order to sanction a liquor license, there must be substantial grounds established by the preponderance of legally competent evidence.

### **C. Arguments**

In closing, the City argued that a gun got into the club, and three (3) people were shot inside. The City argued that most likely the gun got in via the side door since it was open for an extended period of time because of the fan, and the club was down six (6) security guards. The City argued that Silverman was not visually monitoring the door, and the ring camera does not stop someone from coming in the door. The City argued that there was a short fight inside that

precipitated the gun being fired. It argued that a licensee is responsible for what happens inside, and this was an egregious incidence and a serious security failure.

In closing, the Appellant argued that it plans to run security and will do a better job than its prior security companies. The Appellant argued that it is counter intuitive but when reviewing the prior Department decisions, it is more dangerous to have a gun outside than inside a club as there are fatalities in parking lots. It argued that just because a gun got inside that cannot result in an automatic revocation of its License. The Appellant argued that it has a better owner (Silverman) than other clubs, and he has spent money and will take over the security.

**D. Whether There Were Violations on October 16-17, 2021**

**a. 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* at 295-296 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). 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 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.”

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 *Scialo v. Smith*, 99 R.I. 738 (R.I. 1965). As the Supreme Court 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. *A.J.C. Enterprises; Schillers; and Furtado v. Sarkas*, 118 R.I. 218 (1977).

There was a shooting inside the Appellant on October 16-17, 2021. The Appellant stipulated that there was a gun inside the club.<sup>9</sup> A review of the video shows a commotion – a short scuffle - in the upper right hand corner. A man either falls, trips, or is pushed and then another man is trying to punch someone. Within a few seconds, the patrons are seen reacting to what must be the gun fire as they clear the floor, duck, and rush out. Based on Washington’s testimony and the video, the shooting was a result of the scuffle seen on video near Washington. As a result of the shooting, three (3) people (Washington, and the two (2) victims testified to at hearing) were wounded.

Based on the foregoing, on October 16-17, 2021, the Appellant violated R.I. Gen. Laws § 3-5-23 (disorderly conduct).

**b. Conditions of Licensing**

R.I. Gen. Laws § 3-5-21 provides in part as follows:

Revocation or suspension of licenses – Fines for violating conditions of license.

(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 . . . 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

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(4) Breach of any provisions of this chapter; or

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Maintaining enough security and providing security is a condition of liquor licensing. *Ciello, LLC d/b/a Luv v. City of Providence, Board of Licenses*, DBR No.: 17LQ008 (9/14/17). The Appellant stipulated that a gun got inside the establishment. While there was a pat down, wand, and a metal detector at the front entrance for patrons, the Appellant kept a side door open to allow smoke to disperse. On October 16, 2021, there were only eight (8) staff members instead of 14

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<sup>9</sup> Initially, there had been a dispute whether the gun was fired inside or outside via the side door. The evidence was that a gun could not be fired from outside through the side door down onto the dance floor.

with five (5) being at the front door based on the Appellant's security plan and Washington's testimony. Washington's testimony was consistent with the Appellant's security plan in terms of the entrance protocol.

The side door was opened at approximately 12:15 a.m. and Silverman's testimony was that at 1:00 a.m., security could be shifted from the front door to the side door. Silverman testified that the side door was staffed with two (2) security staff members when the door was open. However, he did not visually confirm this, but rather testified that was the usual practice. On that night, the side door was opened prior to the time that front door staff usually could be rotated to the side door. The security plan was premised on 14 security staff members. That night there were only eight (8) staff members so it is highly unlikely that with such a shortage that staff could be rotated at 12:15 a.m. while five (5) staff members were still on the front door. While it is not known whether the gun got in the front door or the side door, it likely came in the side door. It could be that people snuck in the side door if no one was staffing it. While there was a large fan in the doorway, it could be moved and put back in place.

In *Club Luv*, there were not enough security inside to handle a minor disturbance and patrons exiting at closing time at the same time. Here, the Appellant decided to open that night knowing it was short six (6) staff members out of 14 that had been provided by a security company that it had terminated and believed had been improperly billing it for no-show staff. The Appellant did not have enough staff to cover the open side door. The Appellant is in violation of R.I. Gen. Laws § 3-5-21 for failing to maintain and provide enough security inside.

#### **E. Prior Discipline**

The License was issued on March 27, 2019. The Appellant had an administrative penalty of \$1,000 imposed in November, 2019 for two (2) bottle service violations in October, 2019. It had an administrative penalty of \$3,000 imposed and a four (4) day closure held in abeyance on

December 31, 2019 for a total of four (4) bottle service violations, two (2) entertainment without license violations, and one (1) nudity violation over different dates. Board's certified record.

#### **F. The Sanctions**

The issue is what is the appropriate sanction for the disorderly conduct and the security failure violations. From *Cesaroni* in 1964 to *Schillers* in 1980 up until today, a liquor licensee is responsible for activities inside and outside its licensed premises. It does not matter how well a liquor licensee supervises such responsibilities since even the most responsible supervising licensee is still responsible for disorderly conduct. *Therault*.

As discussed above, the sanctions imposed for R.I. Gen. Laws § 3-5-23 vary depending on the type of disorderly conduct. Very serious and egregious violations that involve weapons and/or serious assaults could result in a revocation of license. E.g. *Cardio Enterprises d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (license revoked for shooting that arose at bar). A long suspension may be imposed for severe disorderly conduct. E.g. *C & L Lounge, Inc. d/b/a Gabby's Bar and Grill; Gabriel Lopes v. Town of North Providence*, LCA-NP-98-17 (4/30/99) (30 day suspension for severe disorderly conduct but not so severe as to merit revocation).

In *J. Acqua, Inc. d/b/a Acqua Lounge v. City of Providence, Board of Licenses*, 16LQ014 (11/29/16), the bouncer apparently did not pat down a patron because he knew the patron and that patron brought in a gun. There was a fight and the owner intervened in the fight, and the gun went off into the ceiling. That licensee had two (2) administrative penalties within two (2) years prior to the incident and two (2) separate suspensions for disorderly conduct within two (2) years prior to the incidence. The class BVX license was revoked, and the class BV license was suspended for 60 days. That establishment did not have a N license and had not been required to have a security plan. As part

of that decision, the establishment instituted wandering or metal detectors at the entrance, filed a security plan with the Board, and had a police detail assigned.

In *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ054 (12/3/14), the licensee had its fourth disorderly conduct violation in less than two (2) years when a patron brought a pocket knife inside the premises despite security pat-downs and stabbed another patron with a pocket knife. In that matter, there were security lapses, and the fight was brief and quickly quelled by staff but the Appellant was responsible for the fight and it was its fourth disorderly violation within two (2) years. Said licensee's extended license was revoked, and its Class BV license was suspended for 60 days. In addition, a weekend police detail was imposed, and metal detectors were mandated for all patrons entering the club.

The Appellant argued that it seems it is safer to have a gun inside a club rather than in the parking lot. However, the standard is that a licensee is responsible for outside conduct that can be directly or indirectly linked to inside conduct. In some situations, fights outside including with guns cannot be linked to the licensee.

The Appellant provided a list of prior Department decisions that presumably it felt demonstrated that its License should not be revoked. First it mentioned *Fuego*,<sup>10</sup> but that matter involves a shooting outside that mainly revolves around security issues and has only been the subject of a stay order and no final decision has been issued. It also mentioned *Sky*,<sup>11</sup> *Club Luv*,<sup>12</sup> *Penthouse*,<sup>13</sup> and *Vibe*<sup>14</sup> but they are not analogous as *Penthouse* did not involve an allegation of disorderly conduct

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<sup>10</sup> *Fuego Lounge, LLC d/b/a Fuego Lounge v. City of Providence, Board of Licenses*, DBR No.: 21LQ005 (9/14/21 and 9/22/21 stay orders).

<sup>11</sup> *Salacruz LLC d/b/a Sky Lounge v. City of Providence, Board of Licenses*, DBR No.: 14LQ046 (11/25/14).

<sup>12</sup> *Ciello, LLC d/b/a Luv v. City of Providence, Board of Licenses*, DBR No.: 17LQ008 (9/14/17).

<sup>13</sup> *334 South Water LLC d/b/a Mile & A Quarter v. City of Providence, Board of Licenses*, DBR No.: 17LQ006 (11/7/17).

<sup>14</sup> *Vibe Lounge and Hookah Bar, Inc. v. City of Pawtucket, Board of Licenses*, DBR No. 21LQ004 (9/20/21).

and the other three (3) matters found no disorderly conduct. In terms of *Seven*<sup>15</sup> and *Lovera*<sup>16</sup> and *Xcel*,<sup>17</sup> those matters were the subject of stay orders, but full hearings were never held and the appeals were dismissed. The Appellant also raised *Art Bar*, but that matter was resolved by the Board after a stay hearing.<sup>18</sup> The Appellant also mentioned *Fatt Squirrel*<sup>19</sup> which while a disorderly conduct case related to the ejection of a patron and a crowd following the patron outside where someone fired a gun in the air and a patron was punched outside. Its facts are not analogous to the facts in this matter. The Appellant also listed *Acqua* which is relevant to this matter.

The Appellant argued that in future it would have better security than it has had because it would have its own security company and more cameras. The Appellant claimed it spent more money than other clubs on security, but no evidence was introduced comparing such expenditures. Nor is the issue where it is safer to have a gun, inside or outside a licensee. Case law mandates that a liquor licensee is responsible for any disorderly conduct inside the premises and not whether the licensee made a good effort or a bad effort to mitigate such behavior. *Supra*.<sup>20</sup>

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<sup>15</sup> *Seven Providence, LLC d/b/a Seven v. City of Providence, Board of Licenses*, DBR No.: 19LQ022 (7/31/19 stay order) and (12/23/19 dismissal).

<sup>16</sup> *Lovera VIP Inc. d/b/a Lovera VIP v. City of Providence, Board of Licenses*, DBR No.: 18LQ023 (11/13/18 stay order) and (7/9/19 dismissal).

<sup>17</sup> *Vintage Sound, Inc. d/b/a Xcel Lounge v. City of Providence, Board of Licenses*, DBR No.: 18LQ022 (10/25/18 stay order) and (11/19/18 dismissal).

<sup>18</sup> *171 Chestnut Street LLC d/b/a Art Bar v. City of Providence, Board of Licenses*, DBR No.: 18LQ025 (11/20/18 stay order regarding 30 day suspension for a gun being fired at ceiling for licensee in business for 12 years without prior discipline) and (1/11/19 dismissal after resolved). The Appellant also mentioned a matter entitled "*Flow*," but the undersigned is unclear as to which matter that referred to.

<sup>19</sup> *Ocean State Hospitality, Inc. d/b/a Fatt Squirrel v. Providence, Board of Licenses*, DBR No.: 16LQ002 (3/31/16).

<sup>20</sup> The Appellant argued that the discussion in *D'Liakos, Inc. d/b/a Monet v. City of Providence, Board of Licenses*, DBR No. 12LQ088 (11/7/12) about culpability, foreseeability, and *mens rea* was relevant to this matter. In that decision, the Department found a very tenuous link between inside and outside conduct so raised those issues in terms of sanctions; however, those factors are not relevant to establishing a link between inside and outside events when a licensee is responsible for conduct outside that can be indirectly or directly connected to conduct inside. In this matter, no link was needed to be made between inside and outside conduct as there was a fight inside that resulted in the firing of a gun inside and the wounding of three (3) patrons. The Appellant's knowledge, state of mind, or foreseeability are all irrelevant to its responsibility for that conduct and indeed to a sanction. A review of the Department's liquor decisions and Court cases indicate that *Club Monet* is an outlier in relying on such factors when discussing sanctions. An onerous burden is placed on licensees so that mitigation is not relevant. Discipline is progressive based on the nature of violations and the frequency unless the violation is so egregious as to merit revocation. Sanctions also cannot be excessive in relation to the type of violation.



The disorderly conduct inside the Appellant that resulted in the firing of a gun into the crowd, and the wounding of patrons is an egregious event that merits the revocation of the Appellant's extended license (2:00 a.m. "X" license). In *Acqua*, a gun was fired in the ceiling and the licensee had two (2) prior suspensions for disorderly conduct in the prior two (2) years. In *Moe's*, there was a stabbing with a pocket knife which was the fourth disorderly conduct in two (2) years. Both *Acqua* and *Moe's* had their extended licenses revoked as part of progressive discipline. Here, the disorderly conduct is analogous to those cases' progressive discipline for disorderly conduct. The Appellant's disorderly conduct was a gun being fired into the crowd inside the club. The gun was not fired into a ceiling. This was not a stabbing with a pocket knife. Unlike *Acqua* and *Moe's*, the Appellant already had a strict security plan for its front entrance, and a gun got inside. While there has been no prior disorderly conduct in the Appellant's 2 1/2 years of licensing,<sup>21</sup> it has had two (2) other sanctions for multiple violations. This disorderly conduct violation is egregious so that the revocation of the extended license is merited.<sup>22</sup>

The issue remains then is whether the Class BV liquor license should also be revoked for the disorderly conduct violation and the severe security failures.

The severe security failures detailed in the 2018 *Club Luv* decision resulted in that licensee's Class BV license being suspended for 30 days, and its extended Class BVX license being suspended for 180 days.

The Appellant had a very strict security plan with 14 staff members, and patrons must pass through metal detectors and be patted down and wanded and bags searched. The Appellant argued

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<sup>21</sup> It is noted that this time period includes shut downs caused by the Covid19 pandemic so that the Appellant had not been opened for all of those 2 1/2 years.

<sup>22</sup> The Appellant has been operating for less than three (3) years in the midst of Covid19. It claimed that it had over 200 events with no disorderly conduct. The undersigned is unclear whether the 200 events refer to special events or weekend openings. But 200 events would not equal a years' worth of opening or if the licensee is only opened on Friday and Saturdays that would be approximately two (2) years of opening.

that it would be in charge of security and do a better job in the future. The Appellant did not present any information about its planned own security except that Silverman testified he had hired people to head up security and would have more cameras and he had increased his insurance coverage to provide his own security. The Appellant provided no names, no resumes, no written plans, etc., for its new security - that was to go in place one (1) week from the date in question - at hearing. Presumably, the security plan for the Appellant was to be the same (except for cameras) as previously except that Silverman/Appellant would be in charge of the security staff. The Appellant chose to open that night when it was short six (6) security staff members. It could make the same decision whether it was in charge of security or not.

Despite the Appellant's extensive security plan, a gun got inside the club. A fight resulted in a shooting into the crowd. That disorderly conduct violation and security failures are severe violations. In light of the severe security violations, the undersigned is troubled that the Appellant presented no information as to its supposedly better security company and/or plan that was to be effectuated one (1) week after the shooting.<sup>23</sup>

One issue that was not touched upon at hearing but merits discussion in relation to the security plan and that is the reason for the open side door and the fan. Apparently, the side door was routinely opened with a large fan to disperse hookah smoke and clear the air. At hearing, there was testimony regarding hookah smoke. Detective Castro testified about being told the door was regularly opened and the fan used to disperse hookah smoke. Transcript of hearing, at 87. Silverman testified the fan was used to "evacuate the air." *Id.*, at 115.<sup>24</sup> In addition, the photographs of the inside of the Appellant's after the shooting show hookah pipes on several of the tables. Board's certified record.

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<sup>23</sup> Instead, the Appellant chose to argue it was safer to have a gun inside a club rather than outside the club.

<sup>24</sup> Later in his testimony, Silverman mentioned that night they had the "fog thing" going but that seems to be a slip of the tongue as he then said he was sorry and said the fan was going. Transcript of hearing, at 172.

R.I. Gen. Laws § 23-20.10-6<sup>25</sup> excludes from the prohibition on public smoking, any “smoking bar” as defined by R.I. Gen. Laws § 23-20.10-2(20). R.I. Gen. Laws § 23-20.10-2(20) defines a smoking bar as follows:

(20) (i) "Smoking bar" means an establishment whose business is primarily devoted to the serving of tobacco products for consumption on the premises, in which the annual revenues generated by tobacco sales are greater than fifty percent (50%) of the total revenue for the establishment and the serving of food or alcohol is only incidental to the consumption of the tobacco products. Effective July 1, 2015, all existing establishments and establishments that open thereafter must demonstrate quarterly, for a period of one year and annually thereafter, that the annual revenue generated from the serving of tobacco products is greater than fifty percent (50%) of the total revenue for the establishment, and the serving of food, alcohol, or beverages is only incidental to the consumption of the tobacco products. Every owner of a smoking bar shall register no later than January 1 of each year with the division of taxation and shall provide, at a minimum, the owner's name and address and the name and address of the smoking bar. The division of taxation in the department of administration shall be responsible for the determination under this section and shall promulgate any rules or forms necessary for the implementation of this section.

(ii) Smoking bars shall only allow consumption of food and beverages sold by the establishment on the premises and the establishment shall have public access only from the street.

(iii) Any smoking bar, as defined herein, is required to provide a proper ventilation system that will prevent the migration of smoke into the street.

R.I. Gen. Laws § 23-20.10-2(19) defines a smoking as follows:

(19) "Smoking" or "smoke" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, weed, plant, other tobacco product or plant product, or other combustible substance in any manner or in any form intended for inhalation in any manner or form. "Smoking" or "smoke" also includes the use of electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery system products, or other similar products that rely on vaporization or aerosolization; provided, however, that smoking shall not include burning during a religious ceremony.

If the Appellant is allowing public smoking – which includes smoking hookah – it would have to qualify as a smoking bar so that its annual revenue generated by tobacco sales would be greater

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<sup>25</sup> R.I. Gen. Laws § 23-20.10-6 provides in part as follows:

Where smoking not regulated. – (a) Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of this chapter:

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(6) Any smoking bar as defined in § 23-20.10-2(20).

than 50% and the serving of food, alcohol, or beverages would only be incidental to the consumption of the tobacco products. The statute does not allow for or grant a “license” for a smoking bar. Instead, the statute provides that smoking bars file annual affidavits regarding their revenue with the Division of Taxation. The statute also requires smoking bars to have proper ventilation systems to prevent the migration of smoke into the street.<sup>26</sup>

At hearing, there was no evidence whether the Appellant had a ventilation system as required by statute to be a smoking bar. Hookah pipes were prevalent in the photograph of the tables on the dance floor. It can be inferred that since the Appellant routinely opened its side door to let out smoke and clear the air, it cannot have a statutory compliant ventilation system for a smoking bar.<sup>27</sup>

If the Appellant did not have to open the side door to disperse the hookah smoke and clear the air, it would not have the issue of an open door needing to be staffed with security. As it was, the Appellant apparently was offering hookah smoking without meeting the criteria for a smoking bar. But separate and apart from the statutory criteria of a smoking bar, the Appellant did not explain whether it had a new security plan that did not include the side door being routinely opened during business hours. The Appellant did not address its security failures in detail except to argue it would be better when it ran the company.

In some situations, security failures and disorderly conduct result in a long suspension of license. However, in this matter, there was a shooting inside the Appellant. This disorderly conduct is compounded by the severe security failures in relation to the understaffing and open door. In light

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<sup>26</sup> R.I. Gen. Laws § 23-20.10-9(e) provides that during an otherwise mandated inspection, the Department of Health or the local fire department shall inspect for compliance with R.I. Gen. Laws § 23-20.10-1 *et seq.*

<sup>27</sup> DOH previously had promulgated a regulation for smoking bars, *Rules and Regulations Pertaining to Smoke-Free Public Places and Workplaces*, that provided information about the requisite air quality to be provided by the ventilation system. This regulation was repealed in 2018 as duplicative of the statute. <https://rules.sos.ri.gov/regulations/part/216-XXX-XX-3258>.

of the severe security failures and resulting disorderly conduct, the Appellant's Class BV license is revoked.

**VI. FINDINGS OF FACT**

1. On December 9, 2021, the Board revoked the Appellant's License.
2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed the Board's decision to the Director of the Department.
3. A *de novo* hearing was held on February 11, 2022. The record closed on February 18, 2022, and the transcript of the proceedings were received on April 5, 2022.
4. The facts contained in Section IV and V are reincorporated by reference herein.

**VII. CONCLUSIONS OF LAW**

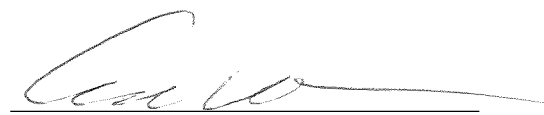
Based on the testimony and facts presented:

1. 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.*
2. The Appellant violated R.I. Gen. Laws § 3-5-23 on October 16-17, 2021 by engaging in disorderly conduct.
3. The Appellant violated R.I. Gen. Laws § 3-5-21 on October 16-17, 2021 by its security failures.

**VIII. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends that pursuant to R.I. Gen. Laws § 3-5-21 and R.I. Gen. Laws § 3-5-23, the Appellant's Class BV and BVX License be revoked.

Dated: May 11, 2022

  
Catherine R. Warren  
Hearing Officer

**ORDER**

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

  X   ADOPT  
       REJECT  
       MODIFY

Dated:   05/12/2022  



Elizabeth M. Tanner, Esquire  
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.**

**CERTIFICATION**

I hereby certify on this 12th day of May, 2022 that a copy of the within Decision and Notice of Appellate Rights were sent by email and first class mail, postage prepaid, to the following: Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903, Mr. Howard Silverman, 162 O'Connell Street, Providence, R.I. 02905, and Louis A. DeSimone, Jr., Esquire, 1554 Cranston Street, Cranston, R.I. 02920 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

