

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.	:	

DECISION

I. INTRODUCTION

This matter arose from an appeal and motion for stay 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” or “City”) 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 with a conditional stay entered on February 22, 2022.² A hearing was held on May 10, 2022³ with the parties represented by counsel. Briefs were timely filed by June 1, 2022.

¹ Pursuant to a delegation of authority by the director of the Department.

² An order modifying the initial stay order and denying motion to restrain and enjoin was entered on March 24, 2022. A further stay order was issued on May 19, 2022.

³ The undersigned and the attorneys also reviewed the videos entered into evidence in an *in camera* review as the videos are subject to a protective order and are sealed. Joint Exhibit One (1).

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

This matter involves a shooting outside the Appellant in the early hours of January 24, 2022. Surveillance video taken inside and outside of the Appellant was entered into evidence. Joint Exhibit One (1). This is a small venue with a capacity of about 30 to 50. The main door is to the left (facing building) and on that left side is the pool area. On the right side, is the bar area. It is not a big building and standing at the main door, Paul Rezendes, the security guard, testified that he could see the pool area (in front of him) and (most) of the bar area (to the right).

During the evening in question, there was a family group of cousins as well as one of the cousin's girlfriend at the Appellant. This group consisted of Ca'ren Hill ("Hill"); Hill's girlfriend Jasmine Dandenau ("Dandenau"); Imani Braz Cabrera ("Cabrera"); Biane Braz ("Braz"); Trequan Baker ("Trey"); Derek Baker ("Derek"); and Corey Baker ("Corey").⁴ Cabrera is Braz's mother.

There were two parts to the evening. The first took place inside the Appellant. The testimony from Hill and Braz is that night, they went with their relations and Hill's girlfriend to the Appellant to gather after the recent death of a cousin from Covid19. As seen on the video, by 10:41 p.m., they were at the actual bar and socialized in the bar area that evening. At midnight, Trey arrived and sat at the actual bar with the rest of the family group.

⁴ As Derek, Trey, and Corey all have the same last name, they will be referred to by their first names. No disrespect is intended.

Also at the Appellant that night was a patron, Qudus Kafo (“Kafo”); the Appellant’s manager and co-owner, Frank Gomes (“Gomes”); the security guard, Paul Rezendes (“Rezendes”); and the bartender, Gladys Caban (“Caban”). Kafo was at the Appellant that night with two (2) friends both named Bruno Vaz. The second part of the evening happened outside after the patrons exited. Outside, one of the Bruno Vazes was shot and wounded. Kafo was shot and killed. Trey was arrested for the shooting. A review of the videos showed the following timeline:

At 10:59 p.m., Kafo was in the bar area where the family was already seated. At 11:06:58 p.m., Cabrera was standing and bopping to the music, and Kafo went over and danced with her and then Hill. He talked to Cabrera, Hill, Danedenau, and offered drinks to the women (spoke to Caban, pointed to women). He walked away at about 11:10 p.m. and returned about two (2) minutes later to check on the drinks. At 11:13 p.m., he returned, talked to Dandenau briefly, and left. At about 11:19 p.m., Kafo returned and took a selfie with Cabrera and two (2) minutes later danced with Hill. At 11:22 p.m., Kafo had his arms around Braz who shook her head

At 11:22 p.m., Kafo was speaking to the women and Derek and Corey were looking at him. Corey went over and close talked to Kafo. Hill went over (quickly) and put her hand on Corey. A few minutes later, Cabrera and Derek hugged Kafo, and Corey and Kafo shook hands. At 11:28 p.m., Kafo left, but returned six (6) minutes later and talked to Braz and Cabrera. He left within a minute but three (3) minutes later was back dancing with Hill. He left at 11:39:50 p.m. but at 11:50 p.m., he was back dancing with Cabrera but left a minute later.

Right before midnight, Trey entered the bar and joined his cousins. By 12:03:50 a.m., Kafo was over talking to Trey. They were still talking at 12:05:40 a.m. and Trey was shaking his head. At 12:05:17 a.m., Gomes, the manager, went over. Hill walked over and stood between Trey and Kafo facing Kafo. At 12:06:21 a.m., Caban, the bartender, came out from behind the actual bar.

Gomes put his arm in front of Kafo. About 12:05 a.m., Rezendes went over and at about a minute later, he spoke to Kafo. At 12:07:10 a.m., Gomes was talking to Kafo. At 12:09:34, Caban was at the side of the bar itself and took Kafo's hand. At 12:09:48 a.m., Caban still had Kafo's hand but stepped forward and looked like she dropped his hand and at 12:10:09 a.m., she put her hand up in a stop position to Kafo. At 12:13 a.m., Kafo spoke to his friend and Gomes. Kafo looked like he was arguing with his friend. Kafo spoke to Corey. At 12:16 a.m., Gomes was talking to Kafo alone, and Kafo slowly moved away from bar area.

At 12:17:59 a.m., Kafo went outside. A minute later, Kafo was back inside and walked toward the bar area. A waitress put her hand out to stop him. Kafo's friend went over, and they stood there. The waitress was behind Kafo and reached out again to his shoulder. At 12:19 a.m., Gomes went to Kafo, and they talked animatedly. Gomes put his hands up. Kafo was moving to the door but was arguing with his friend. At 12:23 a.m., Kafo was near the door and Gomes went over. Kafo exited with his friend at 12:23 a.m., returned at 12:39 a.m., and stayed in the pool area until he exited at 12:43:38 a.m. After 12:05 a.m., Rezendes was in the area between the bar and pool areas so was not in front of the door. He was there when Kafo tried to go back to the bar side.

Meanwhile, the family group left the bar area by 12:43:14 a.m. and exited the building. It is noted that when Trey arrived at 11:59:22 p.m., a friend drove him and stayed in the car in the parking lot while he went inside the Appellant.

The timeline for the outside is as follows:

12:43:03 a.m. Trey went out; went to his car on the passenger side; Corey, Derek, Hill outside.

12: 43:51 a.m. Cabrera talking to Trey.

12:44:17 a.m. Someone is yelling "move, move, move, go, go."

12: 44:27 a.m. Family group is outside and Kafo and Rezendes, all yelling.

12:44:35-37 a.m. Gomes talking to group; pointing to leave; someone yelling, "go home."

12:45:13 a.m. Someone yelled “do me a favor and get the fuck out of here.”

12:45:16 a.m. Cabrera yelled “let's go,” family moved along; security, Kafo, and friends behind.

12:45:22 a.m. Someone (Trey) shouted “get in car.”

:26 Gomes went to Kafo who is next to a car in parking lot.

:27 Gomes talked to Kafo who was heading toward the group.

:29 and 30 Cabrera yelled “you guys need to keep them away.”

:34 Cabrera yelled “they just need to keep him away,” family is saying “let's go; we're going.”

:36 Gomes said to Kafo “leave them, leave them.”

:48 Kafo was pointing to the group and Gomes was holding his arm.

:54 Kafo waved off Gomes and walked away.

:55 Kafo gestured to the group and walked around car toward where the group is headed so he separated from Gomes; Gomes did not follow.

:56 As Kafo walked toward the group, Hill ran over and stood in front of him; Gomes has back to them.

:57 Hill in front of Kafo, Gomes headed toward the bar (so back to them), Derek yelling “go,” someone was yelling about apologizing.

12:46:05 a.m. Hill still in front of Kafo as the group moved down the street.

:14 Hill still in front of Kafo; Gomes turned to go inside.

:14-15 Trey leant into his car on passenger side; left car; walked over to street.

:14 to 18 Gomes started walking back inside and inside by :18.

:20 Rezendes separated Corey from group.

:21 Someone yelled something about apologizing and “going, just go.”

:31 Trey's car's driver backed up and was about to go forward on the street toward group.

:40 Cabrera yelled she wanted to go home, the group split, surged toward each other into the street.

:53 shot fired; :57 shot fired; Trey looked like put gun in waistband; left in his car.

Hill testified on behalf of the Board. She testified that she went to the Appellant on the evening of January 23, 2022. She testified that she never met Kafo before, and he came over that night to her group. She testified that at one point in the evening, her cousin, she thinks Corey, had an exchange with Kafo. She testified that she went in between them because she did not want a fight. She testified that there was not good energy. She testified that Kafo was kind of nice and purchased the women a shot. She testified that they knew he was drunk and ignored him. She testified that she thinks there was a time in the evening that Derek spoke with him and told him they had just lost a family member. She testified that when they left and were outside, Kafo was there and started to interact with them. She testified that he was being aggressive toward Derek, and she did not remember seeing any management or security. She testified that she intervened by stepping in front him and saying, "if you're going to hit somebody, hit me; you don't hit girls." She testified that she thought he calmed down because she did not think he would hit her but the next thing she knew, there was scuffling.

On cross-examination, Hill testified that she was drinking that evening before and while at the Appellant. She testified that she was intoxicated. She testified that she gave a statement that night to the police, and told them she was intoxicated. She testified that she was friendly with Kafo that evening and did not tell him to leave or go away. She testified that she does not have any knowledge of a physical interaction that night but there was scuffling.

Braz testified on behalf of the Board. She testified that her mother is pretty friendly and talks to people and talked to Kafo. She testified that when Kafo danced with her, it was too close so she sat down. She testified that she did not invite him to dance. She testified when they left, Hill put herself in front of Kafo and yelled that if "you want to punch anyone; punch me." She testified that she did not know what happened inside between Kafo and Derek and Corey, but it

was aggressive and negative. She testified that Corey seemed aggravated and upset with Kafo, but she did not know why. She testified that when they were leaving, Kafo followed them. On cross-examination, Braz testified that she did not think Trey and Kafo had any interaction inside. She testified that Kafo bought drinks and apologized for dancing on her after her cousin spoke to him. She testified that her mother did not seem to have any issues with him. She testified that Kafo was outside before her group exited, and there were no issues as they were leaving.

Rezendes testified on behalf of the Appellant. He testified that he has almost six (6) years experience in security and works for the company that provides security to the Appellant and previously had been at the Appellant between five (5) and ten (10) times. He testified that he was the only security on duty that night. He testified that at about 11:00 p.m., there was a little disagreement. He testified that he saw Gomes talking to some guys and had pulled Kafo over. He testified there was no physical interaction or else he would have gone over. He testified that nothing happened that night that gave him concern. He testified that Kafo was in good spirits and having a good time. He testified that when people were exiting, the family group was getting into their cars, and Kafo just kept arguing and following the group.

On cross-examination, Rezendes testified that management made the decision to separate Kafo from the group that night. He testified that he was told the nature of the petty disagreement but he did not remember what it was. He testified that if something physical happened, the person would be ejected. He testified that he would not be fair to eject someone for an argument and to do so could escalate rather than deescalate the situation. He testified that upon exiting, Kafo followed the family group. He testified that Hill tried to stop Kafo. He testified that he told her that he got it as he had the situation under control. He testified he was not concerned for her safety but was focused down the street on the other people getting into their cars. He testified that Kafo

was yelling at the group. He testified that he did not approach Kafo because he was dealing with 15 or 20 people, and he was trying to get the big group out first before dealing with one person. He testified that he agreed that Kafo followed the group and antagonized them.

Caban testified on behalf of the Appellant. She testified that she was the bartender that night, and Kafo and his friends were regulars at the weekends. She testified that it looked like he was being friendly with the family group, and he bought drinks. She testified he basically was saying I love you, laughing, and kissing her forehead like he did, and then interacted with other people and would then come back and do the same again. On cross-examination, she testified she came out from behind the bar but did not remember why but was probably being nosey and wanting to see what was happening. She testified that Kafo only bought the drinks for the two (2) women.

Gomes testified on behalf of the Appellant. He testified that Kafo and both Vazes were regulars. He testified that Kafo was speaking to the group, and it seemed friendly and Kafo bought drinks. He testified that at one point, there seemed to be a dispute so he went over and separated the group. He testified that one of the men in the group came over to him and asked him about Kafo, and he told the man that he would speak to Kafo. He testified he spoke to Kafo and told him to leave the group alone as they did not seem to want him there. He testified that after that Kafo seemed to shake hands with the man in the group and left. He testified that there was nothing else that happened that evening inside. He testified that he did go outside when people were exiting to ensure people were leaving but he was inside at the time of the shooting.

On cross-examination, Gomes testified that he separated Kafo from the family group when inside, but he did not consider having them exit separately. He testified that he directed Kafo to stay on the pool side of the establishment as that was where his friends were. He testified that he spoke to Kafo outside, and both Vazes told Kafo to keep things calm, and he told the Vazes to

keep an eye on Kafo because Kafo “was a little riled up.” Tr. 194.⁵ He testified that the people were in the parking lot in front of the Appellant which is part of its property. He testified that Kafo followed the family group. He testified that he went inside because when people usually start moving off the property, he goes inside to make sure tabs are paid and people are exiting in an orderly fashion. He testified that would be a typical situation; though, that evening was not typical. He testified that he could not stop Kafo from following the group as that was not something he was doing. He testified they were off the property, and security was out there.

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

⁵ This refers to the transcript of the hearing and the page number.

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 Department⁶ 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 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).

⁶ At that time the alcoholic beverage commission.

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

The Appellant argued that no nexus could be shown between the events inside the Appellant and the shooting outside. It argued that neither Hill nor Braz’s testimony supported a finding that there was any disorderly conduct inside the establishment. It argued that neither witness testified that there was a physical altercation inside. It argued that Braz testified that the problems with Kafo occurred after exiting and not during their exit. It argued that any friction had been ironed out by Kafo apologizing. The Appellant argued that there was nothing that happened inside from which an inference could be drawn that the shooting outside was directly or indirectly related to conduct inside.

The City argued that while the Appellant argued Kafo was being friendly, there was clearly tension between Kafo and the family group. The City argued that Gomes and security intervened and then Gomes directed Kafo to stay away and had to make sure he did. The City argued that the Appellant should have ejected Kafo in order to diffuse the situation. The City argued that failing an ejection, the Appellant should not have allowed Kafo and his friends to leave at the same time as the family group. Finally, the City argued that the Appellant failed to separate Kafo from the group and failed to follow up on trying to divert his attention. The City argued that it can be inferred that the shooting was directly or indirectly related to what occurred inside.

D. Whether There Were Violations on January 23-24, 2022

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 causal link between incidents occurring outside or nearby a drinking establishment and its patrons. Such a link is established when it can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within.”

A 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).

Thus, *Cesaroni* speaks of 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. To find disorderly conduct, the case law speaks of the conduct “within” the premises and not the parking lot.

In *Stage Bands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.), a Superior Court case, found direct evidence 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*. These 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. Similarly, in *Cardio Enterprises d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) the facts surrounding the fight within that bar and killing included that the patrons in the bar argued shortly before closing time and there was a physical altercation inside the bar. In that matter, the victim and the killer physically argued inside the bar which escalated into a killing either inside or just outside the bar.

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 and then there was violence. With the large crowd of people exiting that club as a result of the ejection, it was reasonable to infer that the violence was connected to the crowd that spilled out of that club. 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 then 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 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. See also *El Tiburon Sports, Inc. v. Providence Board of Licenses*, DBR No. 06-L-0087 (6/1/07) (no link between licensee and an assault down the street from licensee). In *Vibe Lounge and Hookah Bar, Inc. v. City of Pawtucket, Board of Licenses*, DBR No.: 21LQ004 (9/21/21), there was no evidence of any disturbance starting inside and spilling outside where it culminated in the fight. In that matter, a patron had been ejected for verbal harassment and returned almost two (2) hours later to shoot a patron after the patron left the licensee.

In *CAG Productions, LP d/b/a Euphoria v. City of Providence, Board of Licenses*, DBR No.: 16LQ022 (4/6/17), patrons were pushing and shoving while exiting so an inference could be made that something happened inside that caused the scuffling upon exiting. The video showed a short and quickly contained disturbance that was quickly dispersed by pepper spray. The area was then calm with police officers walking by so that the stabbing that occurred shortly thereafter could not be linked to the scuffling that took place earlier upon the exiting from the club. In the *Fatt Squirrel*,

the shooting and punching were part of the ongoing disturbance. In *CAG*, a link could not be made to the later stabbing but only to the commotion upon exiting.

It is not enough that the people who fought outside were the Appellant's patrons to make the Appellant responsible for their actions. There is a very strict requirement that makes a licensee responsible for actions inside the bar 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. However, in order for the Appellant to be responsible there must be some kind of activity for which the bar is responsible for and from which it can be inferred the fighting arose. *Supra*.

The Appellant argued that Trey did not interact with Kafo inside; though, they did have some kind of verbal interaction as seen on video where Trey was not happy, and Hill got in between them. However, the conduct inside need not be related to the person responsible for the outside conduct. Instead, if two (2) people start physically fighting each other inside and that causes other people to fight which spills outside to a big group exiting (like *Fatt Squirrel*), it does need to be shown that the person who inside started the physical altercation was the one also involved outside. Indeed, in the *Fatt Squirrel*, it was not known who fired the gun outside. What was known was that there was scuffle inside and altercations that spilled outside when the crowd exited.

Here, the City argued that the shooting inside could be linked to the events inside in that Kafo continuously interjected himself with the family group inside to their annoyance and that continued outside. The Appellant argued that there was no physical altercation, no disorderly conduct, no confrontations, and no animus that evening inside the Appellant. The Appellant argued that if there had been any friction between Kafo and the family, that had been squashed by Kafo's apologies to the Corey and Derek. Certainly, there was no physical altercation or scuffling inside at any time as in *Cardio*, *Fatt Squirrel*, or *CAG*. However, there were ongoing tensions

inside that caused Gomes to intervene and direct Kafo to stay on the pool side of the building away from the family.

In this situation, it was known that there were tensions between the family group and Kafo. Gomes separated Kafo from the group, and Kafo did not listen and tried to go back to the bar area and had to be stopped by Gomes, Kafo's friend, and the waitress. Can it be inferred that the conduct relating to the inside tensions were indirectly or directly connected to the shooting? The conduct inside was not so much a fight as a patron who for whatever reason did not seem to recognize boundaries and apparently got upset when his overtures were rejected (hence following the family group in the parking lot). In looking at the video of the ongoing behavior by the patrons and staff inside, there was not a scuffle between the parties. There was no pushing. The conduct might not be enough to say that the outside disorderly conduct can be inferred to be directly or indirectly connected to the inside conduct; though, it is clear that Kafo was intrigued with the family group that night - kept going back even when told not to - and continued to be so outside. While it is a close call in terms of the issue of disorderly conduct, the ongoing situation inside was such that it, at the very least, is a basis to find a failure to maintain security.

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

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

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). In *Ciello, LLC d/b/a Luv*, there was a shooting outside that was not connected to conduct inside, but there was a severe security failure in terms of maintaining security as patrons exited. In that matter, there were not enough security inside to handle a minor disturbance and patrons exiting at closing time at the same time.

The Appellant argued that there was nothing that happened inside that could have foreshadowed the tragic shooting. While inside, Kafo repeatedly went to the family group where he interacted with various members of the group. While Kafo may have been “friendly” and cheerful and always hugging people, it does not mean that people who did not know him wanted to continuously interact with him.⁷ Indeed, at least some of the family perceived his constant interactions as tiresome. While he danced with some of the women, he also apparently bought apology drinks for the women.⁸ Corey and Derek were annoyed with him. One of them complained to Gomes. On the video, Corey and Derek had an apparent tense verbal interaction with him which was then smoothed over. As a result of exchanges between the family and Kafo, Gomes directed Kafo to stay in the pool area. On video, Kafo argued with Gomes and his friend. Kafo ignored Gomes’ direction as later Gomes, the waitress, and Kafo’s friend stopped Kafo from going back to the bar area. Indeed, even if people are acting jovial or things seem smoothed over, this is a liquor establishment with people

⁷ The Appellant argued that Braz’s and Hill’s testimony at hearing was obviously coached by the City. The Appellant pointed out during the hearing that their statements to the police on the night of the shooting were at odds with their testimony, and they were intoxicated that night. It is true that both witnesses did not completely explain to the police the events of that night nor who were the participants. Joint Exhibit One (1) (police interviews). However, Hill’s testimony regarding Kafo repeatedly coming over is confirmed by the video, and she interjected herself physically when Kafo was talking to Trey and to Corey. Both also testified that their cousins were aggravated with Kafo which is confirmed by the video and Gomes’ testimony. Hill testified that when she was outside, she stood in front of Kafo to try to divert him which was seen on the video as well as being testified to by Braz and Rezendes.

⁸ Caban testified that Kafo only bought drinks for the women but did not know why. Hill and Braz testified that they were apology drinks as Kafo said he was sorry and bought the drinks. Tr. 19, 81 and 160.

being served alcohol so that there is always a concern that a situation could become volatile. Liquor licensees have an “onerous burden” because of the very nature of their business: the serving of liquor.

Supra.

In light of the inside situation, it would have been prudent for management to eject Kafo especially once he failed to follow directions, and failing that, to separate Kafo and the family when exiting or at least to keep an eye on the family group and Kafo when exiting. Indeed, at that time the family and Kafo were exiting, they were apparently the only people exiting. As seen on the video, there were no other groups of people exiting.

However, even without considering the inside conduct, the security oversight upon the exiting of patrons was problematic. Upon exiting, there was a group of patrons in front of the Appellant in its parking lot that were followed by another patron who would not leave. People in the group shouted for him to leave and for the Appellant to take care of it. Following that scenario, the manager held Kafo’s arm. The manager told Kafo to leave. The manager told Kafo’s friends to keep an eye on Kafo because Kafo was “riled up.” Kafo ignored the manager and walked toward the family group. Then the manager went inside. No one walked with Kafo. No one from the Appellant tried to separate Kafo from the family group. Instead, Hill tried to divert Kafo by standing in front of him. Security engaged with the family group. Security did not interact with Kafo. Rather an intoxicated patron tried to intervene and divert Kafo from following them.⁹

⁹ The Appellant intimated that Trey must have had some earlier beef with Kafo as he had his friend wait outside for him with the car running. Now it is not known what Trey told his friend before he went inside; he could have said that he just had to make an appearance inside and would be back in a minute or two and then stayed longer or the driver thought he would be back sooner for whatever reason or the driver kept the car running for heat in the winter. Trey is heard on the video telling patrons to get to their cars. This could be because he was being helpful or was trying to isolate Kafo. However, had he purposely gone to the Appellant to confront Kafo, one would think he would have just waited outside for him. Instead, Trey was in the group with his cousins, and Kafo kept following them and not stopping despite being yelled at. Trey initially went to his car and then it looked like he retrieved something – presumably the gun – and followed the family and Kafo to the street where the argument continued and then unfortunately, the shooting occurred.

It is not known whether if someone had stayed physically close to Kafo and tried to keep him away from the family group as they went to their cars, that would have prevented the shooting. But what is known is that no one did.

The job of security is to be proactive in terms of potential issues. And it is to be reactive as well to what is going on with a licensee's patrons. Outside, the Appellant knew at the very least that Kafo was riled up. Gomes went inside despite describing it as an atypical situation and after he told Kafo to leave. Rezendes was busy with the family group. Both knew Kafo was following the group. But they did not do anything to divert him or walk with him.

Furthermore, knowing what went inside – Gomes told Kafo to stay away from the family and he did not listen and had to be stopped by the waitress, Gomes, and his friend – the Appellant did not consider separating Kafo and the group upon exiting. While the Appellant seemed to perceive Kafo as a jolly regular, the fact is he did not listen to the manager when directed to stay away from the bar area and had to be corralled by Gomes and his friend to be moved away from the bar area. It is not that the Appellant had to believe that a shooting could occur outside, but rather as a condition of licensing, the Appellant is to maintain security. This includes acting to diffuse potential situations that could become volatile and/or dangerous. Such actions should include monitoring the exiting of patrons and separating patrons when necessary.

In *Luv*, there was not enough security inside to handle a minor disturbance and patrons exiting at closing time at the same time. Here, there was no dispute that Kafo followed the family group outside from which he had earlier been directed to stay away. Outside, Gomes told him to leave. No action was taken to try to engage him and prevent him from following the family. Nor was any action taken prior to exiting the Appellant to separate Kafo from the family.

This may be a small venue but clearly there was not enough security to handle the problems upon the exiting of the Appellant that night. It is for that reason that a weekend police detail was continued as a condition of the stay even after the close of the Department hearing.

The Appellant violated R.I. Gen. Laws § 3-5-21 for failing to maintain and provide enough security inside and outside prior to and upon exiting on the evening of January 23-24, 2022.

E. Prior Discipline

The Appellant does not have any prior discipline.

F. The Sanctions

The issue is what is the appropriate sanction for the security failure violations. The severe security failures detailed in the 2017 *Luv* decision are similar to this matter. *Supra*. The failures in *Luv* resulted in that licensee's Class BV license being suspended for 30 days, and its extended Class BVX license being suspended for 180 days. Here, the Appellant does not have an extended license. Therefore, it is recommended that the License be suspended for 60 days and certain conditions as detailed below be imposed.

VI. FINDINGS OF FACT

1. On February 9, 2022, 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 May 10, 2022. Briefs were timely filed by June 1, 2022.
4. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

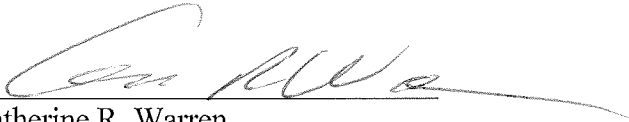
Based on the testimony and facts presented:

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 did not violate R.I. Gen. Laws § 3-5-23 on January 23-24, 2022.
3. The Appellant violated R.I. Gen. Laws § 3-5-21 on January 23-24, 2022 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, the Appellant's License be suspended for 60 days. In addition, the Appellant shall maintain a police detail on weekend nights (Friday and Saturday nights) and any night before a State holiday as well as on a State holiday.¹⁰ The condition of the police detail shall be reviewed by the Board after 60 days from the execution of this decision. At that time, the Board may continue the police detail or it may decide that the Appellant has provided information in terms of how it might better provide security at night. The suspension shall begin on the 31st day after the execution of this decision. As the Appellant was already closed between January 24, 2022 and March 1, 2022 (36 days), the Appellant shall serve a further 24 day suspension.¹¹

Dated: June 17, 2022


Catherine R. Warren
Hearing Officer

¹⁰ The Appellant cannot open without the required detail. The detail runs from approximately 9:30 p.m. to 1:30 a.m. on the required days. If a detail is not available on a required day, the Appellant cannot open past 9:30 p.m. without the required detail.

¹¹ On June 6, 2022, the Appellant filed a motion to modify the May 19, 2022 stay order in relation to the closing time on Sunday, July 3, 2022, a night before a State holiday to which the City objected. With this decision, the motion is moot so no further ruling is needed. With this decision, the reduced hours on Sunday nights no longer apply. However, with July 3, 2022 being a night before a State holiday, a police detail will be required.

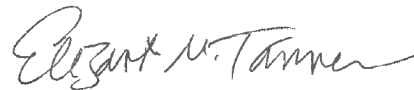
It is noted that during the pendency of this hearing, the Appellant had at times reduced operating hours. While the time that it was closed prior to the stay is to be applied to its suspension, the reduced hours are not being applied and can be considered an additional part of the sanction.

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: 06/22/2022



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 23rd day of June, 2022 that a copy of the within Decision and Notice of Appellate Rights were 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, 13 00 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.

