



A liquor appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21 is considered a *de novo* hearing. The Department's jurisdiction is *de novo* and the Department independently exercises the licensing function. *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964); and *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Because the Department's has such broad and comprehensive control over traffic in intoxicating liquor, its power has been referred to as a "super-licensing board." *Baginski v. Alcoholic Beverage Comm.*, 4 A.2d 265, 267 (R.I. 1939). See also *Board of Police Com'rs v. Reynolds*, 133 A.2d 737 (R.I. 1957). The purpose of this authority is to ensure the uniform and consistent regulation of liquor statewide. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964).

### **III. STATUTORY BASIS FOR SANCTIONS**

R.I. Gen. Laws § 3-5-23 governs disorderly conduct. It states in part as follows:

(b) If any licensed person permits the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood . . . he or she may be summoned before the board, body, or official which issued his or her license and before the department, when he or she and the witnesses for and against him or her may be heard. If it appears to the satisfaction of the board, body, or official hearing the charges that the licensee has violated any of the provisions of this title or has permitted any of the things listed in this section, then the board, body, or official may suspend or revoke the license or enter another order.

R.I. Gen. Laws § 3-5-21 states 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 or by the division of taxation, on its own motion, for breach by the holder of the license of the conditions on which it was issued or for violation by the holder of the license of any rule or regulation applicable, or for breach of any provisions of this section.

(b) Any fine imposed pursuant to this section shall not exceed five hundred dollars (\$500) for the first offense and shall not exceed one thousand dollars (\$1,000) for each subsequent offense. For the purposes of this section, any offense committed by a licensee three (3) years after a previous offense shall be considered a first offense.

#### IV. DISCUSSION OF CASES ON SANCTIONS

In revoking or suspending a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. Rather, the Rhode Island Supreme Court held in *Cesaroni v. Smith*, 202 A.2d 292, 295-296 (R.I. 1964) as follows:

[T]he legislature, in enacting the pertinent provision of the statute, intended to impose upon such licensee the obligation to maintain an efficient and affirmative supervision over the conduct of his patrons in his place to such an extent as is necessary to maintain order therein. It is our opinion that as a practical matter a licensee assumes an obligation to affirmatively supervise the conduct of his patrons so as to preclude the generation therefrom of conditions in the neighborhood of like character to conditions that would result from maintenance of a nuisance therein.

It is to be conceded that this imposes upon a licensee an onerous burden in the management of the licensed premises. It is, however, within the authority of the legislature, the liquor traffic being peculiarly within the police power of the state.

Furthermore, the Court found that “disorderly” as contemplated in the statute meant as follows:

The word "disorderly" as used here contemplates conduct within premises where liquor is dispensed under a license that causes either directly or indirectly conditions in the neighborhood in annoyance of or disturbing to the residents thereof. *Id.* at 296.

Thus, a liquor licensee has the “responsibility to control the conduct of its patrons both within and without the premises in a manner so that the laws and regulations to which the license is subject will not be violated.” *Schillers, Inc. v. Pastore*, 419 A. 2d 859 (R.I. 1980).

A liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali v. Smith*, 254 A.2d 766 (R.I. 1969). It is not a defense that a licensee is not aware of the violations or provided supervision to try to prevent violation. While such a responsibility may be onerous, a licensee is subject to such a burden by the legislature and accepted such conditions by becoming licensed. *Therault v. O'Dowd*, 223 A.2d 841, 842-3 (R.I. 1966). See also *Scialo v.*

*Smith*, 99 R.I. 738 (R.I. 1965). As the Supreme Court has found, “the responsibility of a licensee for the conduct of his patrons within the licensed premises that makes it disorderly within the meaning of the statute is established by evidence showing a toleration or acquiescence in such conduct by the licensee.” *Cesaroni*, at 296. See *AJC Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); *Schillers*; and *Furtado v. Sarkas*, 118 R.I. 218 (1977). Overall, *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.

The Department reviews sanctions to ensure statewide consistency and appropriateness in the situation. It also supports progressive discipline barring the rare and extreme event, an egregious event, where revocation may be warranted without prior discipline. It also accepts the principles of comity and deference to the local authorities and their desire to have control over their own town or city. At the same time, pursuant to R.I. Gen. Laws § 3-2-2 and R.I. Gen. Laws § 3-7-21, the Department ensures that tensions between local boards and licensees are settled in a consistent manner. Nonetheless, there is not a mechanical application of sanctions as each matter has its own sets of circumstances. See *C&L Lounge, Inc. d/b/a Gabby's Bar and Grille; Gabriel L. Lopes v. Town of North Providence*, LCA – NP-98-17 (4/30/99). At the same time, a sanction cannot be arbitrary and capricious. The unevenness of the application of a sanction does not render its application unwarranted in law but excessive variance would be evidence that an action was arbitrary and capricious. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation for a series on infractions). See *Jake and Ella's v. Department of Business*

*Regulation*, 2002 WL 977812 (R.I. Super.) (R.I. Super.) (overturning a revocation of a liquor license as arbitrary and capricious).

**V. STANDARD FOR ISSUANCE OF A STAY**

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976), a stay will not be issued unless the party seeking the stay makes a “strong showing” that “(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest.” Despite the ruling in *Harsch*, the Supreme Court in *Department of Corrections v. Rhode Island State Labor Relations Board*, 658 A.2d 509 (R.I. 1995) found that *Harsch* was not necessarily applicable in all agency actions and the Court could maintain the *status quo* in its discretion when reviewing an administrative decision pursuant to R.I. Gen. Laws § 42-35-15(c). The issue before the undersigned is a motion to stay a Decision which is subject to a *de novo* appeal and does not fall under R.I. Gen. Laws § 42-35-15(c). Nonetheless, it is instructive to note that the *Department of Corrections* found it a matter of discretion to hold matters in *status quo* pending review of an agency decision on its merits.

**VI. PRIOR DISCIPLINE**

The Appellant represented that it has held a liquor license for at least 20 years and only has one (1) previous sanction which was a short suspension 16 years ago. The Board did not dispute this and indicated the prior sanction was in relation to a noise complaint.

## VII. THE TESTIMONY AND BOARD DECISION

A transcript of the Board hearing was not available; however, a video of the Board's hearing was available online, and the undersigned listened to the August 22, 2022 hearing.<sup>2</sup> The parties also made representations at the stay hearing.

At the Board hearing, Peter Chabot who was the Interim Police Chief of New Shoreham on August 8, 2022 testified. He testified that prior to August 8, 2022, he became aware of the free reggae festival to be held on August 8, 2022 at the Appellant. He testified that he spoke to the Appellant's owner prior to August 8, 2022 about increasing security for the festival. He testified that he also spoke to the Block Island ferry about the high number of ferry ticket sales for that day. He testified that the festival was to end at 7:00 p.m. but that the Appellant turned the music off and stopped the liquor service at 6:00 p.m. so that there was a mass exodus of patrons. He testified that the ferry line to return to the mainland had about 3,000 people in it. He testified that he felt the Appellant's security was overwhelmed. He testified that there were no issues until late afternoon at the Appellant. He testified that there was an argument/altercation at the Appellant at 5:45 p.m.

Steven Filippi, the Appellant's owner, testified that he had the first reggae festival in 2017. He testified that he only posted about the reggae festival on Facebook but that *Providence Monthly* listed it. He testified that he decided on Sunday, August 7, 2022, to end the music at 6:00 p.m. rather than 7:00 p.m. He testified that on Sunday, he told the ferry representative and the police chief that the live music would stop at 6:00 p.m. He testified that on August 8, 2022 (Monday), the ferries were full in the morning, and the Appellant got very busy. He testified that he wanted to close his establishment to new patrons around 1:00 p.m. or so and spoke to the police chief but in the end, he agreed with the police chief to let people in one on one so that one person was

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<sup>2</sup> See <https://www.newshorehamri.gov/161/Town-Council> for link to the YouTube video of the Board hearing on August 22, 2022.

admitted for every one person who exited. He testified that it was the next day that he learned of the 5:45 p.m. altercation. He testified that he turned off the live music and stopped alcohol service at 6:00 p.m. but the police chief asked him to put a bartender back on and put music back on. He testified he did but he does not think the 6:00 p.m. stoppage caused the exodus because people were going to leave anyway to catch the ferry. He testified that not everyone just left at 6:00 p.m.

Also at the Board hearing, there was testimony from police officers, Appellant's patrons, and a high speed ferry employee.<sup>3</sup> There was testimony about people jumping a fence to enter the Appellant because of the long entry lines, and then they would not have had their bags checked. There was testimony that Appellant used bracelets for those over 21 to allow them to drink so anyone jumping the fence would not get a bracelet. There was testimony that the fence issue was quickly contained. There was testimony that there were long lines – thousands of people - to get onto the ferry to leave Block Island. There was testimony that crowded ferries from Block Island are not unusual. There was testimony that while the crowds were waiting for the ferry, there were arguments among the people in line and people were cutting the line and the amount of litter was unusually high. One officer testified the ferry crowds were very unruly as compared to other reggae festivals in prior years.

The Appellant agreed that there was physical altercation at Ballard's at 5:45 p.m. in the outside patio area licensed for the sale of liquor. A video of this altercation was shown at the Board hearing.

At the stay hearing, the Appellant represented that it opens at about 8:00 a.m. and serves breakfast. It represented that it usually empties out by 6:00 or 7:00 p.m. as any of the live music

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<sup>3</sup> The testimony about the lines at the ferry relate to the regular ferry, not the high speed ferry.

would end by then. The Appellant represented it is closed by 10:00 p.m. as its business is a beach recreational facility so it is an afternoon business.

At the stay hearing, the parties agreed that the basis for the suspension was 1) the 5:45 p.m. altercation; 2) fence jumping; and 3) non-physical altercations off-premise from the Appellant including on the ferry's premises.<sup>4</sup> The Board also indicated that a basis for the suspension was that the Appellant turned off the music and liquor at 6:00 p.m. which precipitated the problems at the ferry.

### **VIII. ARGUMENTS**

The Appellant represented that it has had the reggae festival for many years without incident but this year, there were many more people than usual attending the festival. It argued that this was an anomalous event with an unexpected crowd. It represented that it canceled its last remaining scheduled music festival for the season. It agreed that there was a physical altercation on its premises but that it was not a melee, was over in less than a minute, was broken up by security, did not involve weapons, and did not result in any serious injuries. The Appellant argued there were no alcohol related violations such as over service or underage service, or over capacity.<sup>5</sup>

The Appellant argued that it has a substantial likelihood of success on the merits in regard to the off-premise altercation. The Appellant argued that it was not responsible for off-premise altercations at the lines for the ferry in that the Block Island ferry is a private company, and it was aware of the large number of tickets sold for the ferry that day and is responsible for the boarding and exiting of its patrons on its ferries. The Appellant argued that it would suffer irreparable harm on the basis of the following: 1) the season on Block Island ends at the end of August; 2) 10% of

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<sup>4</sup> It was agreed that anything that happened on the ferries that day was not being used against the Appellant.

<sup>5</sup> There was testimony by the police chief that he and the fire marshal checked capacity and the Appellant was within capacity.



its season is the next 14 days; 3) loss of jobs for its employees and it has over a 100 employees who will not be able to finish the season; 4) families and businesses scheduled to be there over the next week via room and cabana rentals and business retreats; and 5) loss of goodwill. The Appellant argued that the sanction of a 14 day suspension is disproportionate for the small physical altercation when it has only had one (1) sanction 16 years ago.<sup>6</sup>

The Board argued that the issue was the large concert held by the Appellant that brought so many people there. It argued that there were long lines to enter causing patrons to jump the fence. It argued that the Appellant's owner admitted there were too many people there. The Town argued that the Appellant is responsible under case law for the fight on its premises, and the premises were out of control. It also argued that the Appellant by turning off the music and liquor service at 6:00 p.m. and causing a mass exodus of patrons created the problems at the ferry. The Town argued that the public safety issue is compounded by the fact the Appellant is on an island so it is harder seek assistance from other police departments. The Board argued that while the Appellant argued it would suffer economic harm, that is not as important as public safety.

## **IX. DISCUSSION**

### **A. Substantial Likelihood of Success on the Merits**

Applying the criteria from *Harsch*, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. Liquor licensees are responsible for conduct that arises within their premises and for conduct that occurs off premises but can be reasonably inferred from the evidence had their origins inside. In suspending a liquor

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<sup>6</sup> At the stay hearing, the Appellant raised the issue of potential bias by the Board as the Appellant argued that its members solicited public comment and were advocating against the Appellant. However, the hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984) (as the 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). See also *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964); *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964).

license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct.

It is not disputed by the Appellant that there was one (1) incidence of disorderly conduct on its premises. While the Town has a substantially likelihood of success to show there was a disorderly conduct violation in relation to the 5:45 p.m. altercation, it does not have a substantial likelihood of success to show that a 14 day suspension is appropriate for that one disorderly conduct in light of its licensing history and progressive discipline. *Vibe Lounge and Hookah Bar, Inc. v. City of Pawtucket, Board of Licenses*, DBR No. 21LQ004 (9/20/21); and *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No.: 14LQ022 (6/24/14).

There seems to have been knowledge that the ferries would be crowded. Indeed, the police increased its officers and told the Appellant to increase security. Some of the issues about crowd control seem to relate more to the entertainment than liquor licensing. There was testimony and reference to issues related to people exiting the Appellant and going to the ferry where people in line got into verbal altercations, were arguing, littering, and cutting the line. There was testimony that those waiting for the ferry were unruly. It is unclear whether those incidences at the ferry can directly or indirectly be inferred to have been caused by conduct inside the Appellant. Nor is it clear that those incidences are a breach of conditions (e.g. security) of a liquor licensee.<sup>7</sup>

There does not seem to be a substantial likelihood of success on the merits by the Town in terms off-premises behavior. And even if the Town could prove those allegations, there is an issue of whether the 14 day suspension is appropriate.

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<sup>7</sup> The Department does not have jurisdiction over the Appellant's entertainment license. At the stay hearing, the undersigned ascertained that the Town issues entertainment licenses for a year rather than by the month or by per event. Thus, the Town did not know about the reggae festival until after it was scheduled as it was scheduled by the Appellant using its pre-existing entertainment license.

**B. Irreparable Harm to the Appellant; Substantial Harm to Other Interested Parties; Public Interest**

The Appellant argued that it will suffer irreparable harm if it is forced to close. However, the Board (an interested party) has an interest in ensuring that liquor licensees – where the public gather - are compliant with their statutory obligations. In addition, there is a strong public protection interest. Not only does the public have an interest in ensuring that public spaces are safe, granting a stay raises issues of public safety and public protection. The Appellant argued that there was not an ongoing public safety issue because this was an unexpected outlier for a concert.

**C. Whether to Grant a Stay**

The Department has consistently followed progressive discipline barring an egregious act. Applying the stay criteria, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. In this matter, there is a substantial likelihood that the Board will prevail on the one (1) disorderly conduct; however, the Appellant has a strong likelihood of success of prevailing on reducing the sanction (for the one (1) disorderly conduct). It is unclear if the Board can prevail on the off-premise issues which it argued were caused by the Appellant turning off the music and liquor. The activities at the ferry were not physical disorderly conduct (verbal arguments, cutting in line, littering) but could be considered a nuisance. The Board argued that the music festival caused the crowds. The testimony supports that the crowds came for the music.

The Appellant's entertainment license was suspended so there will be no entertainment over the next 14 days, and it is the entertainment that caused the crowds on August 8, 2022. Many of the issues seem to be related to crowds at the ferry trying to leave after the concert. Since there will be no entertainment over the next 14 days, the potential public safety issue is not a factor.

If a stay is not granted for the suspension, the Appellant will not have a meaningful appeal since the suspension would end prior to a full hearing on the merits. Thus, based on the foregoing as well as in its discretion the Department will maintain the *status quo* prior to the events of August 8, 2022.

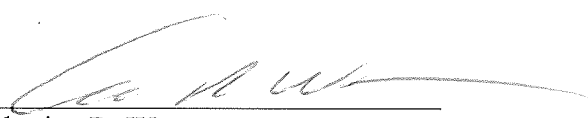
**X. RECOMMENDATION**

Based on the foregoing, the undersigned recommends that the Appellant’s motion for a stay be granted conditioned on closing by its usual closing time of 10:00 p.m.

Nothing in this order precludes the parties from agreeing to a modification of a stay.

Nothing in this order precludes either party from petitioning the undersigned to revisit this order because of a change in circumstances.

Dated: August 24, 2022

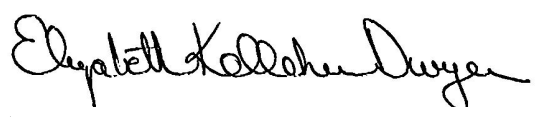
  
Catherine R. Warren  
Hearing Officer

**INTERIM ORDER**

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

  X   ADOPT  
       REJECT  
       MODIFY

Dated: 8/24/2022

  
Elizabeth Kelleher Dwyer, Esquire  
Interim Director

**A hearing will be scheduled on a mutually convenient date to be determined by the parties.<sup>8</sup>**

<sup>8</sup> Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant is responsible for the stenographer.

NOTICE OF APPELLATE RIGHTS

THIS ORDER CONSTITUTES AN INTERLOCUTORY ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-15. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS

CERTIFICATION

I hereby certify on this 24<sup>th</sup> day of August, 2022 that a copy of the within Order was sent by electronic delivery and first class mail, postage prepaid, to the following: Brian LaPlante, Esquire, Michael J. Jacobs, Esquire, and Justin T. Bonnick, Esquire, LaPlante Sowa Goldstein, 78 Kenwood Street, Cranston, R.I. 02907, James M. Callaghan, Esquire, Callaghan & Callaghan, 3 Brown Street, Wickford, R.I. 02852, and Nicholas A. Solitro, Esquire, Robert E. Craven & Associates, 7405 Post Road, North Kingstown, RI 02852 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920.

Megan G. Mihara