

IV. MATERIAL FACTS AND TESTIMONY

The parties filed an agreed stipulation of facts which is summarized as follows:²

1. The Appellant is located at 13 Kelly Street, Warren, Rhode Island.
2. The Appellant was issued a Class D liquor license by the Town.
3. The Class D liquor license allows the service of alcoholic beverages from 6:00 a.m. to 1:00 a.m.
4. According to the records of the Warren Police Department, there have been no issues at the Appellant since 2015.
5. The incidents related to this matter took place on September 2, 2021.
6. On Thursday September 2, 2021, at 2:56 p.m., officers from the Warren Police Department were called to respond to a report of gun shots fired at the Appellant.
7. The Warren Police Department received two (2) 911 calls regarding the shooting at the Appellant. The initial 911 call was received at 2:56:18 p.m. from John Grady ("Grady"). The second 911 call was received at 2:58:09 p.m. from Anita Hodges.
8. Michael Ouellette ("Ouellette") was the president of the Appellant.
9. Patrick McKiernan ("McKiernan") was working as a bartender at the Appellant on September 2, 2021.
10. Ouellette was present at the Appellant when McKiernan arrived to begin his shift on September 2, 2021, at approximately 11:00 a.m.
11. The Appellant has a video surveillance system which recorded the events of September 2, 2021.
12. The time stamp on the Appellant's surveillance video is incorrect and does not correspond to the actual time. However, extrapolating the known time of the first 911 call, Ouellette entered the Appellant at approximately 10:35 a.m.
13. According to the Appellant's surveillance video, Ouellette consumed at least one (1) Bud Light beer prior to McKiernan arriving at work to begin his shift.
14. McKiernan is observed on the Appellant's surveillance video serving Ouellette five (5) Bud Light beers at the Appellant over a period of time prior to the shooting.

² See agreed statement of facts filed by the parties.

15. Ouellette is observed on the Appellant's surveillance video consuming five (5) or six (6) Bud Light beers over a period of time of approximately four and a half (4.5) hours prior to the shooting.

16. Ouellette is observed on the Appellant's surveillance video leaving the Appellant via the rear door at 1:36:50 p.m. as indicated on the video.

17. Ouellette returned to the Appellant at 1:59:13 p.m. via the rear door as indicated on the Appellant's surveillance video.

18. Ouellette was gone from the Appellant for approximately 23 minutes.

19. The following individuals were present at the bar when Ouellette returned to the Appellant: McKiernan, Brian Remy ("Remy"), Grady, and Jason Furtado ("Furtado").

20. Ouellette walked over and shot Remy in the head without provocation. Remy was pronounced dead at the scene. Ouellette then shot Furtado two (2) times as Furtado tried to escape from the Appellant. Furtado's injuries were not life threatening.

21. Ouellette allowed Grady to leave the Appellant without harming him. Grady left the Appellant and called 911 from his cell phone as indicated above.

22. McKiernan provided Ouellette another Bud Light beer. Ouellette is seen drinking the Bud Light beer in the Appellant.

23. Ouellette then left the Appellant.

24. Ouellette's residence is within walking distance of the Appellant.

25. This incident was investigated jointly by the Warren Police Department, the Rhode Island Office of the Attorney General, and the Rhode Island State Police ("RISP"). RISP Detective Kyle Draper was the lead investigator in this case. RISP completed a lengthy report documenting this incident.

In reviewing the Appellant's surveillance video, the undersigned observed as follows: prior to the shooting when Ouellette was inside the club, he was at the far left side of the bar (facing the bar) near the patio exit. After Remy entered the club, Ouellette was only in the club for five (5) minutes and 35 seconds at the same time as Remy. Remy entered the club by the far right by the door and sat on the far right side of the bar. No interaction between Ouellette and Remy can be seen on the video. Ouellette exited the club by the left patio side near where he was standing.

Ouellette returned to the club 23 minutes after he left. When he returned to the club, he entered on the left side via the patio entrance. When he first got to the patio, McKiernan was outside having a cigarette, and Ouellette walked by McKiernan, stood at the doorway and looked inside, and walked back out of the patio. After McKiernan went back inside the club and about a minute later, Ouellette came back to the patio, took his gun out of his jacket, and walked into the club via the side door. Once he walked into the club, he walked directly over to Remy and shot him. Ouellette did not interact with anyone. He then shot Furtado. He let Grady leave who left after grabbing his wallet and cell phone off the bar. Ouellette then had McKiernan serve him a beer. From Ouellette walking in, shooting Remy, shooting Furtado, letting Grady leave, and getting a beer from McKiernan, it took less than a minute.

At the Department hearing, Lieutenant Christopher Perreault testified on behalf of the Town.³ He testified that he was on duty on September 2, 2021, and it came over dispatch that shots had been fired on Kelly Street. He testified that the shooting occurred just prior to the dispatch call. He testified that 13 officers responded and when he arrived, there was a male victim in the parking lot, and inside there was a male victim that he knew was Brian Remy. He testified that the victim outside was alive and had been shot twice. He testified that McKiernan and Grady were outside and identified the shooter and described what he had been wearing. He testified that he ascertained Ouellette's address and requested help from the Bristol police. He testified that Ouellette's apartment was about an eighth of a mile from the club. He testified that Ouellette engaged in a gun fight outside with police officers and was killed.

Perreault testified that he was able to obtain surveillance video from the club, and obtained search warrants for Ouellette's residence. He testified that he reviewed the video. He testified that

³ All testimony is from the Department hearing.

in terms of the shooting, Ouellette entered through the back door, walked over to Remy and shot him in the head. He testified that he did not believe that Remy spoke to Ouellette before he was shot. He testified that Ouellette arrived at about 10:30 a.m., and he left 25 minutes before the shooting. He testified that when Ouellette returned, there was no interaction between Remy and Ouellette. He testified that, based on the video, it looked like Ouellette left money on the bar to pay for his beers. He testified that based on the autopsy, Ouellette's blood alcohol content ("BAC") was .277 with the legal limit being .08.

On cross-examination, Perreault testified the club video had no audio and the club turned over the video so he did not need to execute a search warrant. He testified that there were beer cans in Ouellette's house and truck. He testified Ouellette left the club for 25 minutes before the shooting, and while it is not known where he went, it is assumed that he went to his apartment since he was not wearing a jacket when he left, and he returned wearing one. He testified that on the video, Ouellette did not look intoxicated and was drinking 12 ounce bottles of Bud Light. He testified that all the club members cooperated with the police, and several members said that Ouellette must have just snapped. He testified that some club members told him that prior to the day Ouellette had seemed depressed, but nothing that day stood out. He testified that there is a video that shows Ouellette committed suicide.

On re-direct examination, Perreault testified that he has been trained to tell if a person is intoxicated in face-to-face contact so that one can smell breath, see bloodshot and/or watery eyes, hear slurred speech and he could not tell if that was the case with Ouellette as he was viewing him by video. On re-cross examination, he testified no one in the club reported that Ouellette's speech seemed slurred, and he did not look unsteady of his feet in the video.

Corporal Kyle A. Draper, Rhode Island State Police, testified on behalf of the Board. He testified that at the time of the shooting, he was assigned to the major crimes unit and conducted the investigation into the shooting. He testified that officers from the Bristol police responded and were fired upon while on Water Street in Warren in their cruiser. He testified that those officers recognized the description given for the shooter and engaged in gunfire with him. He testified that Ouellette committed suicide, and between both parties about 15 rounds were fired. He testified that on the day of the shooting, Water Street was busy with people at the business and that the incident was a threat to public safety. On cross-examination, he testified that Ouellette was struck by a bullet before he killed himself. He testified that in terms of whether Ouellette was seeking to commit suicide by being shot by the police, he cannot say what was going through his mind but would not believe that Ouellette would expect to survive his activities that day.

(Michael) Anthony Saviano testified on behalf of the Appellant. He testified that that he has been a member of the club for 20 years and the club currently has 23 members. He testified the club supports itself through sales of alcohol, dues, and functions. He testified that the club's bartenders are volunteer members except for Sue Conte who is the widow of the former club president who passed away in July, 2020. He testified that he usually goes to the club three (3) or four (4) times a week and never saw Ouellette involved in a disturbance and never saw him threaten anyone. He testified Ouellette and Remy got along and Ouellette sold quahogs to Remy. On cross-examination, he testified that he was friends with Ouellette and knew him for a few years. He testified that he knew Ouellette would drink but never saw him take drugs. He testified that he is now the club president. He testified that the bartenders are TIPS certified. He testified that McKiernan was a new bartender and was filling in that day.

Sue Conte (“Conte”) testified on behalf of the Appellant. She testified that she works part time as a bartender at the weekends at the club. She testified that her husband was a club member and president when he passed away, and Ouellette was the vice president. She testified she knew Ouellette through her husband, and her husband and Ouellette were best buddies and both were shell fishers and would go out together. She testified that prior to and after her husband passed away, she spent time with Ouellette, and he was like a son to her and always there to help. She testified that she never saw him commit any acts of violent. She testified that she had no reason to expect something like this to happen. On cross-examination, she testified that she knew Ouellette for ten (10) years, and he would be at her house once a week and got on with her kids. She testified that he did drink but drank slowly, and she never saw him intoxicated and never saw him take drugs. She testified that she had no explanation for what happened.

Joseph S. Benevides testified on behalf of the Appellant. He testified that he spoke at the Town Council meeting on this matter. He testified that he has been a club member for 25 years. He testified that what happened was a tragedy, and he was a good friend of Ouellette’s and no one had any idea that Ouellette was capable of what he did. He testified that he was good friends with Remy, and everyone liked him. On cross-examination, he testified that Ouellette drank beer but not hard liquor and he never saw him so intoxicated that he could not walk or talk. He testified that Ouellette might drink six (6) or seven (7) beers, but he never saw him take drugs. He testified that Ouellette was a full time quahogger, but his boat was broken and he did not know for how long.⁴

⁴ During the hearing, the issue of whether McKiernan had completed the statutorily required alcohol server training (TIPS certification) as required by R.I. Gen. Laws § 3-7-6.1 arose. See § 1.4.43 (Alcohol Server Training Program Certification) of 230-RICR-30-10-1 of the *Liquor Control Administration* regulation. After the hearing, the Appellant submitted an affidavit from McKiernan that he was a substitute bartender at the club for another bartender on August 25, September 1, and September 2, 2021 so he was bartending for the third time on the day of the shooting and that he was TIPS certified on October 16, 2021. The club president, Mr. Saviano, also submitted an affidavit outlining the same facts. R.I. Gen. Laws § 3-7-6(2) provides that anyone who falls under the provision to be a certified bartender must complete such training within 60 days of the commencement of his or her employment. As McKiernan first

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 Rhode Island 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).

B. **Arguments**

The Appellant argued that it is small club of 23 people with no prior discipline from at least 2015. It argued that while it was agreed Ouellette had about five (5) or (6) beers in about 4.5 hours, the testimony showed that he was not intoxicated the first time at the club. It argued that Ouellette had no interaction with Remy prior to leaving and left for about 23 minutes with the assumption being that he went home since he returned wearing a jacket that he had not been wearing and carrying a gun. Moreover, the Appellant argued that Ouellette’s autopsy showed a BAC level of .277 which can be inferred to have been caused by drinking at home before returning as he could not have that level with the beer he drank in the club. It argued that Ouellette shot Remy without any prior interaction, and then chose to die by suicide by police. It argued there was nothing that day or prior to that day

bartended on August 25, 2021 and completed his training on October 16, 2021, he fell within the statutory provisions so was not in violation of the statute on September 2, 2021 when he was not TIPS certified.

that would lead it to think that Ouellette was capable of such an act, and all club members cooperated with the police. The Appellant argued that when Ouellette returned and shot Remy, he no longer was a patron (with the beer he drank being served at gun point) and since the club was not responsible for his actions, it was not responsible for the gun fight which was Ouellette's choice of suicide by police.⁵

The Town argued that after Ouellette shot and killed Remy and shot and wounded Furtado, he engaged in a gun battle with the police which jeopardized public safety. The Town argued that the Appellant failed to supervise its patrons and that Ouellette was a patron of the club since he was a member and president. It argued that the Appellant did not offer what it could have done differently. The Town argued that while revocation is rare, this is an instance where under case law public safety was jeopardized, and the revocation should be upheld.

C. 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 also

⁵ The Appellant also argued that there was bias by the Board due to various members' relationship with Remy. However, the hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984) (as the hearing is *de novo*, what occurred at the municipal level, any alleged error of law or fact committed by the municipal agency is of no consequence). *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964); and *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964).

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).

In this matter, the decision is being made on the record below and the testimony at hearing before the Department. 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 and the penalty.

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

⁶ At that time the alcoholic beverage commission.

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.). See also *Stage Bands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.). 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).

Nonetheless, the revocation of a liquor license is a relatively rare event and is reserved for a severe infraction or a series of smaller infractions that rise to a level of jeopardizing public safety. See *Stage Bands* (disturbances and a shooting on one night justified revocation) and *Pakse Market Corp.* (upholding revocation of license when had four (4) incidents of underage sales within three (3) years). See also *Cardio Enterprises, d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (killing of patron with incident starting inside and escalating outside justified revocation).

In order to impose discipline such as a revocation or suspension, cause must be found. R.I. Gen. Laws § 3-7-6 provides that applications for retail liquor licenses may be denied for cause.

Chernov Enterprises, Inc. v. Sarkas, 109 R.I. 283 (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.” *Id.* at 287 (italics in original).

The Court revisited the issue in *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269 (R.I. 1984). In discussing the cause standard of R.I. Gen. Laws § 3-7-6, the Court found,

In determining whether the statutory standard now under consideration is so vague as to offend due process, we are mindful of the principle that vague legislative standards may be saved if the needed specificity has been supplied by judicial interpretation. (citation omitted) The requisite judicial gloss was supplied in [*Chernov*] wherein the court emphasized that in authorizing revocation for cause, the Legislature never intended either to confer upon a licensing authority a limitless control or to countenance the of an unbridled discretion. The cause, the court noted, that would justify revocation had to be "legally sufficient"; that is, it must be bottomed upon substantial grounds and established by legally competent evidence. *Id.* at 274.

An appeal proceeding held pursuant to R.I. Gen. Laws § 3-7-21 is considered a civil proceeding. See *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 also *Parenti v. McConaghy*, 2006 WL 1314255 (R.I.Super.); and *Manny's Café, Inc. v. Tiverton Board of Commissioners*, 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.

D. Prior Sanctions

The Appellant has no prior disciplinary sanctions on its liquor license.

E. Club D License

Most matters that come before the Department regarding disorderly conduct and a liquor license relate to a Class BV license. This matter relates to a social club, a Class D license. A club is defined in R.I. Gen. Laws § 3-1-1(4) as follows.

Definitions. As used in this title, unless the context otherwise requires:

(4) "Club" means a corporation subject to the provisions of chapter 6 of title 7, owning, hiring, or leasing a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable accommodation of its members, and whose affairs and management are conducted by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose, none of whose members, officers, agents, or employees are paid directly, or indirectly, any compensation by way of profit from the distribution or sale of beverages to the members of the club or to its guests beyond the amount of any reasonable salary or wages as may be fixed and voted each year by the directors or other governing body.

R.I. Gen. Laws § 3-7-11 authorizes the granting of a Class D license and provides in part as follows:

Class D license. A retailer's Class D license shall be issued only to a club or to any corporation organized prior to the year 1900 for purposes similar to those set forth in chapter 6 of title 7, and which has held a Class D license for at least ten (10) consecutive years prior to July 1, 1993, and authorizes the holder of the license to keep for sale and to sell beverages at the place described at retail and to deliver those beverages for consumption on the premises where sold. The license authorizes the holder of the license to keep for sale and sell beverages, including beer in cans, at retail at the place described and to deliver those beverages for consumption on the premises. If a club is not the owner or, for the period of two (2) years before the filing of its application for a license, the lessee of the premises where its principal activities are carried on or of kitchen and dining room equipment in the club premises reasonably adequate to supply its members and guests with food, then the license shall authorize the holder of the license to keep for sale and sell malt and vinous beverages, but not beverages consisting in whole or in part of alcohol produced by distillation. Notwithstanding the provisions of this section, with the written permission of the local authority, the licensee may supply food and beverage to the public for consumption on the premises at times determined by the holder of the license. ***

Section 1.4.9 of 230-RICR-30-10-1 of the *Liquor Control Administration* (“Liquor Regulation”) provides in part as follows:

Class D (Club) License - Retail

A. A Class D alcoholic beverage license may only be issued to a club as defined in R.I. Gen. Laws §§ 3-1-1 and 3-7-11.

B. A Class D licensee must have a general meeting at least once a year to elect a board of directors, executive committee or similar body and general officers, and set any wages and/or salary of employees, officers or agents.

C. Any member, agent, officer, or employee shall not be paid directly or indirectly any compensation by way of profit from the distribution or sale of beverages or any other item.

D. A Class D license holder must comply with kitchen requirements set forth for Class B licenses in § 1.4.5 of this Part.

E. “Club Member” shall mean any person who has been admitted by a voting membership in the manner set forth in the club’s by-laws. There shall be no instant membership at the door. Auxiliary, honorary, limited or “social” members of an organization do not qualify as club members.

F. A Class D alcoholic beverage license permits the sale of beverages to members of the licensed club and their guests to be consumed solely on the premises.

G. Guests of a member are required to be accompanied by a member. Guests are required to sign a “guest book” which shall contain:

F. When Sanctions are Imposed

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:

(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

(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.

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

(b) If any licensed person permits the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood . . . or permits any of the laws of this state to be violated in the neighborhood, in addition to any punishment or penalties that may be prescribed by statute for that offense, he or she may be summoned before the board, body, or official that 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.

G. Whether There Were Violations on September 2, 2021

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). See *Furtado v. Sarkas*, 118 R.I. 218 (1977) (obligation to affirmatively supervise conduct of its patrons). In a denial of a renewal matter, *A.J.C. Enterprises*, at 275, found in discussing the disorderly provisions that “there 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); and *Scialo v. Smith*, 210 A.2d 595 (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. See also *A.J.C. Enterprises*; *Schillers*; and *Furtado*.

Thus, *Cesaroni* speaks of conduct by patrons 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.

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. 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 that escalated into a killing either inside or just outside the bar. In *Truth VIP Lounge, LLC d/b/a Revel Lounge v. City of Providence, Board of Licenses*, DBR No. 21LQ009 (5/12/22), there was a fight and shooting among patrons inside the licensee so that the licensee was responsible for that disorderly conduct. 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. 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.

There is no dispute that Remy's murder was tragic. However, the issue in this matter is not to ascribe blame in his murder and the shooting of Furtado but to review the facts of the events at the Appellant where the shootings occurred and to determine the facts as they relate to the Appellant's obligations as a liquor licensee.

At the Department hearing, there was testimony and discussion regarding Ouellette and whether anyone at the club knew prior to September 2, 2021 that something like the shootings could occur and was anyone on notice of potential problems. While the testimony indicated that Ouellette was not a violent man and was liked by club members, the issue before the Department is not one of whether the Appellant should or could have been on notice prior to September 2, 2021 that Ouellette was capable of such actions but rather the issue relates to what happened that day at the club.

There is a very strict requirement that makes a licensee responsible for actions inside an establishment and those outside activities that arise from inside 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. *Cesaroni* and *Furtado* speak of the licensee's affirmative burden to supervise the conduct of its patrons. A licensee is responsible for its patrons' conduct within and outside of its premises. *Schillers*.

Ouellette was at the club drinking and paying for beer for about four (4) hours before leaving. The parties agreed that between the time Ouellette entered the bar for the first time and the shooting was 4.5 hours. In that time, the parties agreed he consumed about five (5) or six (6) beers. Prior to shooting, Ouellette left the bar for 23 minutes. Grady called the police at 2:56 p.m. The shooting occurred shortly before the dispatch call so at approximately 2:55 p.m. Working

back 23 minutes from 2:55 p.m. is 2:32 p.m. The parties agreed that the time on the video surveillance of when Ouellette left the club and returned was inaccurate. Thus, he would have left the bar at approximately 2:32 p.m. which is about four (4) hours after he first entered. If during this time, he had engaged in an altercation inside with any other patron in the club that then escalated to a shooting inside, the result would be very clear that the Appellant was responsible. Or if during this time at the club, Ouellette had engaged in an altercation inside with any other patron in the club that then carried on outside and resulted in a shooting, the result would be very clear that the Appellant was responsible. *Stage Bands, Cardio, and Truth VIP. Supra.* A liquor licensee is responsible for disorderly conduct even if it tried to provide supervision to its patrons to try to prevent a violation.

However, Ouellette left the club for 23 minutes before returning and shooting Remy and Furtado. If the scenario was that someone walked into a liquor licensee and had not been there that day but just walked inside and shot a patron inside, it would be clear that person was not a patron. In that situation, a licensee would argue that under *Cesaroni* and *Furtado*, the shooter was not a patron of the licensee, and it did not have a duty of supervision to the shooter at the time of the shooting. Here, Ouellette had been at the club earlier and at the time was clearly a patron as he drank beer and paid for the beer. He then left. When he returned, he walked right over to Remy. He did not stop and partake of any drinks or engage in any conversation.

In *Vault*, the patron had left the club and was outside for 18 minutes before shooting in the air into the street. In that matter, after the patron exited, the patron had stayed in front of the club and nearby and tried to get back in the club so it was determined the patron was still a patron at the time of the shooting so that the licensee was responsible for the shooting. *Supra.* In contrast, in *Vibe*, the patron had been ejected by the club and two (2) hours later returned and shot an exiting patron outside

the club. In that matter, the patron was no longer a patron at the time of the shooting so that the licensee was not responsible for the shooting.

The Appellant argued that once Ouellette left the club, he no longer was a patron and when he returned, he was not a patron. The Town argued that Ouellette was a patron as he was a club member and president. Unlike a Class BV liquor license, a Club D liquor license is for a social club.

As detailed in the statute and regulation (*supra*), a social club is to be managed by a board of directors or executive committee whose members cannot be paid either directly or indirectly from any profit from the distribution or sale of alcohol. The club must have a general meeting at least once a year to elect its board of directors or officers. Liquor is only to be sold to members and their guests for on-site consumption. *Portuguese-American Independent Social Club v. Costello*, 6 A.2d 717 (R.I. 1939) (discussion of social club requirements).⁷

A patron in this matter means a customer of a type of establishment. Being a club member does not make one always a customer of a club. A member of a club is different from a patron. For example, members can bring in guests who are then patrons and can consume alcohol on-site. At those times, the club members are patrons along with their guests. When a club member is volunteering to be a bartender, the club member is a “server”⁸ who is serving alcohol and not a patron. A club member and patron are distinct roles. A club member is always a club member. But a patron is someone who is a customer at the establishment so is partaking of liquor service and/or food service

⁷ There was no evidence that any of the Appellant’s officers were paid for their duties by the club. A licensee is responsible for violations of laws within its establishment including by its employees. *Tel Aviv, LLC d/b/a Tel Aviv v. City of Providence, Board of Licenses*, DBR No.: 16LQ015 (12/8/16) (licensee responsible for its manager’s drug dealing). However, there were no arguments that Ouellette was an employee nor was there any such evidence in support of that theory.

⁸ Section 1.4.34(B)(9) of the Liquor Regulation provides as follows:

“Server” means any person who sells or serves alcoholic beverages; anyone serving in a supervisory capacity over those who sell or serve alcoholic beverages; anyone whose job description entails the checking of identification for the purchase of alcoholic beverages; and valet parking staff.

as provided by the licensee. A liquor licensee is responsible for its patrons – in other words those that are partaking of what the licensee can serve, e.g. liquor - and it is because of its liquor license that it is responsible for its patrons.

Ouellette was a patron at the Appellant for about four (4) hours and then he left. The inference can be made that he went home (a short walking distance, one-eighth a mile, from club) and got his jacket and gun before returning to the club. While at home, an inference can be made that he also consumed more alcohol. During the four (4) hours at the club, he consumed five (5) or six (6) standard drinks.⁹ While there was no testimony at hearing regarding how the liver processes alcohol, a rule of thumb is that it can process one (1) standard drink an hour.¹⁰ A BAC of .08 is the legal limit. With a BAC of .277, it appears that Ouellette drank elsewhere after being at the club.¹¹ Once he left the bar for 23 minutes and went home, he ceased being a patron of the bar. This is not a scenario like *The Vault. Supra*. Rather Ouellette left the bar and went home.

When Ouellette returned to the club, he was no longer a patron. When he entered the club, he did not act as a customer. He did not order a drink. He did not order food. He did not interact with patrons in the club except to shoot Remy and Furtado and obtain a beer at gun point. It cannot be inferred from the evidence that the actions by Ouellette had their origins inside the club as there

⁹ Section 1.4.34(B)(11) of the Liquor Regulation provides as follows:

“Standard drink” means: 12 ounces of beer (approximately 5% alcohol by volume); 4.5 ounces of wine (approximately 12% alcohol by volume); and 1.25 ounces of 80 proof liquor (approximately 40% alcohol by volume).

¹⁰ See <https://medlineplus.gov/lab-tests/blood-alcohol-level/> and <https://www.cdc.gov/alcohol/fact-sheets/alcohol-use.htm>.

¹¹ There was testimony and arguments at hearing over whether Ouellette became intoxicated when he initially was at the club. Despite that testimony, the Town did not allege any over-service by the club. It could be that he had drank prior to coming to the club in the morning, but the testimony regarding Ouellette on the video did not lend itself to finding that he was already intoxicated when he first arrived in the morning. However, whether Ouellette was intoxicated or not does not have a bearing on whether he was a patron when he returned to the club.

was no contact between Ouellette and Remy inside the club when Ouellette was initially there,¹² and there was no disorderly conduct inside the club by patrons which resulted in the shooting. Instead, there was a break of 23 minutes between Ouellette's first visit and his second visit.

Once Ouellette ceased being a patron, the Appellant no longer had an affirmative duty to supervise Ouellette. Since Ouellette was no longer a patron at the time of the shooting, there is no need to analyze the violent aftermath of the murder of Remy and shooting of Furtado. It goes without saying that the gun fight between Ouellette and the police during which he killed himself was a dangerous occurrence. But under the liquor licensing law, the Appellant is not responsible as it was no longer responsible for Ouellette's actions when he returned to the club as he was no longer a patron.

However, maintaining enough security and providing security is a condition of liquor licensing. R.I. Gen. Laws § 3-5-21. *FabCity Cigar Lounge, Inc. d/b/a FabCity Cigar Lounge v. Board of License Commissioners for the City of Pawtucket*, DBR No. 22LQ005 (6/22/22); and *Ciello, LLC d/b/a Luv v. City of Providence, Board of Licenses*, DBR No.: 17LQ008 (9/14/17). In *Truth VIP*, the licensee was a late night establishment that had an approved security plan which was not followed the night in question and a gun got into the licensee and after a scuffle, someone shot (but did not kill) three (3) people. In *FabCity*, the licensee was aware of the interactions among patrons during the night and upon exiting and failed to take proper steps to handle the problems among the patrons.

An establishment licensed as a Class N night club license is required pursuant to R.I. Gen. Laws § 3-7-16.6 to provide security. A local licensing authority may require a liquor licensee to

¹² See *401 Nightlife, LLC d/b/a Pregame Lounge v. City of Cranston, City Council, Safety Services Committee*, DBR No. 22LQ006 (8/17/22) (licensee not responsible when patrons that had no interaction inside left and then engaged in disorderly conduct outside).

provide a security plan or to have a plan in place. In contrast to large Class BV establishments, the Appellant is a small social club. There was no evidence that the Appellant had any security requirements as a condition of licensing. However, the Appellant had an extensive video surveillance system. All licensees have the duty to supervise their patrons. Thus, a licensee may choose to provide security as part of its business plan or because of its capacity as a way to try to avoid any disorderly conduct violations. There can be security violations when a club fails to implement security plans. *Truth VIP*; and *Ciello, LLC*. There can be security violations when a licensee ignores issues inside and outside and security fails to address such issues. *FabCity*. In this matter, the shooter was not a patron so the Appellant did not have a duty to supervise. But there also were no allegations or evidence of any other types of security violations.

Finally, *Thompson v. East Greenwich*, 512 A.2d 837 (R.I. 1986) found that a town may grant a liquor license upon conditions that promote the reasonable control of alcoholic beverages. Conditions can be imposed without the finding of a violation if they are promoting reasonable control of alcoholic beverages. A condition of the stay in this matter was the filing by the Appellant with the Board of a written safety plan. Said safety plan shall continue to be followed by the Appellant.

VI. FINDINGS OF FACT

1. On or about September 14, 2021, the Town notified the Appellant that its License had been revoked by the Town.
2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed the decision to the Director of the Department.
3. By order dated September 24, 2021, the Department conditionally stayed the revocation of the License.

4. A hearing was held on March 10 and April 12, 2022. Oral closings were made on August 29, 2022.

5. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

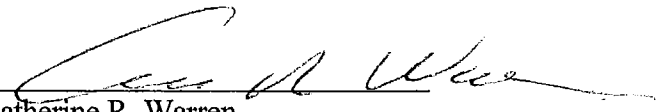
1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. The Appellant did not violate R.I. Gen. Laws § 3-5-21 or R.I. Gen. Laws § 3-5-23 on September 2, 2021.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the decision of the Town revoking Appellant's Class D License be overturned, and the stay vacated. However, the Appellant shall continue to use its security plan that was filed with the Board as a condition of its stay.

Dated: September 29, 2022

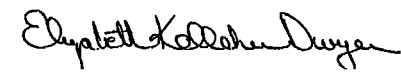

Catherine R. Warren
Hearing Officer

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: 10/14/2022


Elizabeth Kelleher Dwyer, Esquire
Interim 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 14th day of ~~September~~^{October}, 2022 that a copy of the within Decision and Notice of Appellate Rights was sent by email and first class mail, postage prepaid, to the following: Kevin Bristow, Esquire, One Turks Head Place, Suite 950, Providence, R.I. 02903 and Anthony DeSisto, Esquire, Town Solicitor, 514 Main Street, Warren, R.I. 02885 and Anthony DeSisto Law Associates, 450 Veterans Memorial Parkway, Suite 103, East Providence, R.I. 02914 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920

