

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

Saje Kitchen Group, LLC, Appellant,	:	
	:	
	:	DBR No. 24LQ013
	:	
v.	:	
	:	
City of Providence, Board of Licenses, Appellee.	:	
	:	

ORDER RE: MOTION FOR STAY

I. INTRODUCTION

This matter arose from a motion for a stay filed on November 22, 2024 by Saje Kitchen Group, LLC (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 in regard to its Class BV liquor license (“License”). It does not have an extended license.¹

This matter revolves around an incident that occurred on November 8, 2024 at the Appellant. The Board held an emergency meeting on November 9, 2024 and under the City’s Home Rule Charter § 1102(b)(3) suspended the Appellant’s licenses for 72 hours and scheduled the matter for hearing on November 12, 2024.² On November 12, 2024, no hearing was held as the matter was continued to November 21, 2024 for a full show cause hearing by the Board.³ The Appellant was to remain closed pending the November 21, 2024 hearing. On November 21, 2024,

¹ Appeals to the Department can only relate to the liquor license held by the Appellant. See *El Nido v. Goldstein*, 626 A.2d 239 (R.I. 1993) (victualing license is a separate and distinct license from a liquor license).
² <https://providenceri.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=11735&Inline=True> (minutes of Board’s November 9, 2024 meeting).
³ <https://providenceri.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=11737&Inline=True> (minutes of Board’s November 12, 2024 meeting).

the Board continued the hearing as it had not gathered all evidence and ordered the Appellant closed pending a hearing before the Board.⁴ The parties represented the Board hearing would be held on December 5, 2024.

The Appellant requested the Department reopen it pending the Board's hearing to which the City and Board objected. A remote hearing on the motion to stay was heard on November 25, 2024 before the undersigned who was delegated to hear this matter by the director of the Department.

II. JURISDICTION

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

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. See *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). 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. STANDARD FOR ISSUANCE OF A STAY

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (R.I. 1976), a stay will not be issued unless the party seeking the stay makes a "strong showing" that "(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not

⁴ <https://providenceri.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=11752&Inline=True> (minutes of Board's November 21, 2024 meeting) and <https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=14789&Format=Minutes> (audio of Board's November 21, 2024 meeting).

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.

IV. THE BASIS FOR DISCIPLINE

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

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

In imposing a sanction on a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. Rather, the Rhode Island Supreme Court held in *Cesaroni v. Smith*, 202 A.2d 292, 295-6 (R.I. 1964) as follows:

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

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

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

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

Thus, a liquor licensee has the “responsibility to control the conduct of its patrons both within and without the premises in a manner so that the laws and regulations to which the license is subject will not be violated.” *Schillers, Inc. v. Pastore*, 419 A. 2d 859, 859 (R.I. 1980). A liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali v. Smith*, 254 A.2d 766 (R.I. 1969). It is not a defense that a licensee is not aware of the violations or provided supervision to try to prevent violation. While such a responsibility may be onerous, a licensee is subject to such a burden by the legislature and accepted such conditions by becoming licensed. *Therault v. O’Dowd*, 223 A.2d 841 (R.I. 1966). See also *Scialo v. Smith*, 99 R.I. 738 (R.I. 1965). See also *A.J.C. Enterprises; Schillers*; and *Furtado v. Sarkas*, 118 R.I. 218 (1977).

In addition, 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 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

V. DISCUSSION

In May, 2024, the Board revoked the Appellant's License. The main allegation by the Board was that in November, 2023 after several after-hour and bottle service violations, the Appellant agreed as a condition of licensing not to have Andre Samuel ("Samuel") on the premises, but the Appellant continued to have Samuel on the premises. The Board revoked the License in May, 2024 after finding two (2) more after-hour violations by the Appellant, and that the Appellant twice had Samuel on the premises in February, 2024.⁵

After a stay hearing on the May revocation matter (24LQ004), the Department issued a conditional stay order of the revocation on May 14, 2024 ("Stay Order"). The License revocation was stayed pending a full hearing conditioned on the Appellant closing at midnight and not having Samuel on the premises. The Stay Order is still in effect and while it was appealable to Superior Court as an interlocutory order, the Appellant, the Board, and the City did not appeal it.

The parties represented that prior to completing the full hearing before the Department on the May revocation matter, the parties began settlement discussions but the May matter had not been resolved since new allegations had arisen that the parties were trying to include in the settlement agreement. These new allegations were not the November 8, 2024 incident.

Before the settlement was agreed to by the parties, the November 8, 2024 incident occurred. The Appellant represented that on that date someone got inside the premises with a knife and stabbed another individual (or sliced the person) but was subdued by security and taken outside. While outside, the person continued to struggle. The Appellant represented that Samuel was on the premises and followed security outside and the knife person said something provocative to Samuel (while security was handling this individual) and Samuel struck the knife person.

⁵ A that time, there had been no disorderly conduct violations.

On November 8, 2024, the Appellant had rented its second floor to another entity for a fundraiser. See agreement between Appellant and entity submitted by the Board. It was undisputed that a comedy show (for the fundraiser) was taking place that evening. It is not known if the knife assailant was at the second floor event or not.

A. Arguments

The Appellant argued that it was unconstitutional to ban Samuel from the premises, and he was only there as a patron. The Appellant represented Samuel is married to the Appellant's owner, and she runs the establishment. The Appellant argued the system worked the way it should in that the person who brought the knife was detained and removed by security. It argued that it has already been closed for three (3) weekends so should be reopened pending the full hearing.

The City argued Samuel was on the premises in violation of the Stay Order, and he went outside during the security event which is not an action of a patron. It argued the Appellant is in a no entertainment zone and had entertainment that night. It argued the Appellant has shown that it cannot follow rules and failed to comply with the Stay Order so there are no further conditions that can be imposed to ensure compliance. The City and Board argued the Appellant should not be reopened pending the Board's hearing, and the Stay Order should be vacated.

B. Should a Stay be Granted Pending the Board's Full Hearing

Based on the Appellant's representations, it violated R.I. Gen. Laws § 3-5-23 by having disorderly conduct inside the premises (the stabbing) and outside (the striking of Samuel) with the outside disorderly conduct being directly caused by the inside disorderly conduct. While the Appellant argued that Samuel was there as a patron, he followed security outside who were handling an unruly patron, and such behavior is more consistent with staff or management or security acting to

ensure the patron is ejected. Indeed, Samuel escalated the incident by following security outside and engaging with the knife person outside and striking him.

Usually, the issue at hearing would be what is the appropriate sanction for a disorderly violation. That usually depends on the type of violation, whether there have been other prior disorderly violations or other violations, and if there are any options for addressing the violation, etc.

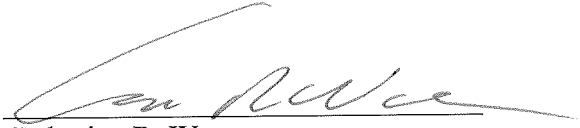
However, the Appellant also violated a Department order by violating the Stay Order. See R.I. Gen. Laws § 3-5-21. The Appellant argued that Samuel cannot be banned from the premises, and he was acting a patron that night. The Stay Order made no distinction for whether Samuel was a patron or a manager or staff of the Appellant. He was not to be on the premises. The Appellant did not appeal the Stay Order. The Stay Order was in effect, and Samuel was not to be on the premises. Instead, he was on the premises and escalated a disorderly incident. In addition, the Appellant has a history of after-hour and bottle service violations. See Stay Order. Now it seems that it also cannot comply with the entertainment ban in the area.

Not only was there a disorderly violation by the Appellant but the very person who was banned from the premises by the Stay Order was on the premises that night and escalated the situation. It is most likely the Board will impose some kind of sanction after a full hearing. The Board's sanction will depend on what it hears at the hearing. While the Appellant has been closed for approximately 16 days and will be closed for about 25 days by the time of the hearing, there is no doubt that its disorderly violation and violation of the Stay Order would result in a least a 25 day suspension. The Appellant has not made a strong showing that it will prevail at the Board hearing that this matter will be resolved without at least a suspension. It is in the public interest that liquor licensees comply with orders and conditions of licensing. There is no reason to reopen the Appellant pending the Board's hearing scheduled for December 5, 2024.

VI. RECOMMENDATION

Based on the foregoing, the undersigned recommends the Stay Order be vacated, and the Department will not issue a stay of the Board's closure of the Appellant in this matter pending the full hearing before the Board scheduled for December 5, 2024.

Dated: November 26, 2024

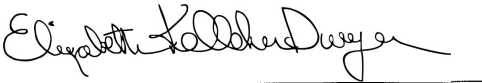

Catherine R. Warren
Hearing Officer

INTERIM ORDER

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

ADOPT
 REJECT
 MODIFY

Dated: November 26, 2024


Elizabeth Kelleher Dwyer, Esquire
Director

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 26th day of November, 2024 that a copy of the within Order and Notice of Appellate Rights was sent by first class mail, postage prepaid and by electronic delivery to the following: Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903; Louis A. DeSimone, Jr., Esquire, 1554 Cranston Street, Cranston, R.I. 02920; and Frank Lombardi, Esquire, 370 Atwood Avenue, Cranston, R.I. 02920, and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Megan Mihara
