

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

401 Nightlife, LLC d/b/a Pregame Lounge, :
Appellant, :

v. :

DBR No. 24LQ006

City of Cranston, City Council, Safety :
Services Committee, :
Appellee. :

DECISION

I. INTRODUCTION

This matter arose from an appeal filed on July 8, 2024 by 401 Nightlife, LLC d/b/a Pregame Lounge (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding an emergency decision taken on July 1, 2024 by the City of Cranston, City Council, Safety Services Committee (“City” or “Board”) revoking the Appellant’s Class BV liquor license (“License”). The Board confirmed its revocation of the License after its hearing on November 13, 2024 from which the appeal also arises.¹ A hearing on this matter was held on December 9, 2024 with the parties resting on the record.² The parties were represented by counsel.

¹ At the Board hearings, the Board also revoked the Appellant’s victualing license. The appeal to the Department only relates 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). The Appellant has a Class B liquor license which is conditioned on holding a victualing license.

² The transcript of the Department hearing was received by the undersigned on December 27, 2024.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 3-7-21, R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.* and 230-RICR-30-10-1 *Liquor Control Administration* regulation (“LCA Regulation”).

III. ISSUE

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

IV. MATERIAL FACTS AND TESTIMONY

On November 13, 2024, the Board confirmed its decision to revoke the License taken at its July 1, 2024 hearing. The Board also revoked the Appellant’s victualing license. The parties agreed the Appellant filed a petition for a *writ of certiorari* with the Rhode Island Supreme Court on the victualing license revocation but has not heard yet from the Supreme Court.³

The License is owned by the Appellant which is a LLC. The Appellant represented that Jacqueline Blair (“Blair”) owns the majority of the LLC and Hamlet Lopez (“Lopez”) is a minority owner. The City did not disagree. There is no dispute that Lopez has been arrested and charged with various drug related offenses. There is no dispute that the police conducted various searches of properties associated with Lopez. There is no dispute that the Appellant has been closed since July 1, 2024.

At the July 1, 2024 Board hearing,⁴ the City’s police chief, Colonel Winquist testified. He testified there was information that narcotics were being distributed at the Appellant and that Lopez and family members were involved in a large scale distribution of narcotics. He testified a search

³ The Rhode Island Supreme Court has held that when a town council acts in a quasi-judicial manner and does not provide for a right of appeal, the proper avenue for appeal is *writ of certiorari* to the Rhode Island Supreme Court. *Cullen v. Town Council of Town of Lincoln*, 893 A.2d 239 (R.I. 2000); and *Eastern Scrap Services, Inc. v. Harty*, 341 A.2d 718 (R.I. 1975).

⁴ <https://www.youtube.com/watch?v=Zm3VJNyKUrE> (July 1, 2024 Board meeting).

warrant was executed at the Appellant at the first floor basement and notebooks, ledgers, narcotics, currency packaging materials, baggy cellophane wrapping, digital scales, and paperwork were seized. He testified in his experience, the items seized were the type used in narcotics transactions, and Lopez was charged with at least 15 felony counts. He testified the police have responded on multiple occasions to the Appellant for large disturbances, unruly crowds, intoxication, and after hours which are detailed in police reports, and the calls happened after the Appellant's closing time of 1:00 a.m. City's Exhibits Four (4) to Ten (10). He testified the Appellant has been a problem for many years, there was a drive by shooting in front of it, and it should not be allowed to continue to operate. The Appellant was unrepresented by counsel at the July 1, 2024 hearing and requested a continuance so that counsel could appear but was denied so was unable to participate since it is a LLC so required counsel. See also City's Exhibit C (July 1, 2024 Board meeting minutes).

At the Board's November hearing,⁵ the Board relied on its evidence from its emergency July 1, 2024 hearing relating to the search warrants and prior police reports.

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 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*,

⁵ See <https://www.youtube.com/watch?v=S2kL0P8WKlc> (November 13, 2024 Board meeting).

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 (R.I. 1998).

B. The Appeal before the Department

The Department has broad and comprehensive control over the traffic in alcohol. Indeed, the Department's power of review is so broad that it has been referred to as a "state superlicensing board." *Baginski v. Alcoholic Beverage Comm'n.*, 4 A.2d 265, 267 (R.I. 1939). Thus, the Director has the authority under R.I. Gen. Laws 3-7-21, "to make any decision or order he or she considers proper."⁶ The hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. See *AJC 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); and *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964) (Department's jurisdiction is *de novo* and the Department independently exercises the licensing function). While there was not a totally new hearing before the Department, the proceeding before the Department is considered a *de novo* hearing. The outcome of an appeal is a decision whether to uphold, overturn, or modify a licensing board's decision. Therefore, this appeal is not bound by the Board's reasons for its sanctions but whether the Board presented its case for its sanctions before the

⁶ R.I. Gen. Laws § 3-7-21 provides in part as follows:

Appeals from the local boards to director. (a) Upon the application of any petitioner for a license, or of any person authorized to protest against the granting of a license, including those persons granted standing pursuant to § 3-5-19, or upon the application of any licensee whose license has been revoked or suspended by any local board or authority, the director has the right to review the decision of any local board, and after hearing, to confirm or reverse the decision of the local board in whole or in part, and to make any decision or order he or she considers proper, but the application shall be made within ten (10) days after the making of the decision or order sought to be reviewed.

undersigned. The undersigned will make her findings on the basis of the evidence and will determine whether that evidence justifies said decision.

The Department reviews sanctions to ensure statewide consistency and appropriateness in the situation. It also supports progressive discipline barring the rare and extreme event where revocation may be warranted without prior discipline. It also accepts the principles of comity and deference to the local authorities and their desire to have control over their own town or city. At the same time, pursuant to R.I. Gen. Laws § 3-2-2 and R.I. Gen. Laws § 3-7-21, the Department ensures that tensions between local boards and licensees are settled in a consistent manner. Nonetheless, there is not a mechanical application of sanctions as each matter has its own sets of circumstances. See *C&L Lounge, Inc. d/b/a Gabby's Bar and Grille; Gabriel L. Lopes v. Town of North Providence*, LCA – NP-98-17 (4/30/99). 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).

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

An appeal proceeding held pursuant to R.I. Gen. Laws § 3-7-21 is considered a civil proceeding. See *Board of License Commissioners of Tiverton v. Pastore*, 463 A.2d 161 (R.I. 1983). See also *Scialo v. Smith*, 210 A.2d 595 (R.I. 1965). 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).

C. Arguments

The Appellant represented that it would be agreeable to Lopez divesting himself from ownership but had not wanted to take any action while the License was in litigation.

The Appellant argued that Lopez was initially denied bail but was told that he could receive bail depending on the toxicology report. Appellant's Exhibit B (bail hearing, p. 258). It argued that Lopez eventually obtained bail so the conclusion to be made is the toxicology report came back negative. Appellant's Exhibit F (bail conditions).⁷ The Appellant argued that Lopez was arrested on drug conspiracy, but there was no nexus between the allegations against Lopez and the Appellant's operations. The Appellant argued at the bail hearing, the task force detective testified there were no drug sales taking place at the Appellant's, and the Appellant's premises were not the focal point of the searches which were focused on other property (the stash house, a car wash) and no drugs were found at the Appellant's. Appellant's Exhibits A and B (bail hearing, p. 56; p. 147-148; p. 175-184).

⁷ No copy of the toxicology report was provided to the undersigned. Blair's affidavit states that she understands that no drug traces were found on anything seized from the Appellant's premises. Appellant's Exhibit E.

The Appellant argued it is located on the first floor of a three (3) story building that is owned by a company owned by Lopez, but the part of the building where alleged drug paraphernalia was found is not the Appellant's location in the building. It argued the alleged paraphernalia was not found in the basement like the search warrant indicated but in an exterior storage unit. Appellant's Exhibit D (photo). It argued that Blair did not even have access to the storage unit. Appellant's Exhibit G (Blair affidavit). It further argued the alleged drug paraphernalia was actually items used for the packaging of hookah as described in Blair's affidavit. It argued there has been no showing that Lopez conducted any criminal activity at the Appellant. It argued that Lopez has not been indicted and has been granted bail. Finally, the Appellant argued the City tried to create progressive discipline by including police reports that had never been previously adjudicated by the Board. It argued that even if some violations could be found on the basis of the police reports, they would be after hours and the License was renewed in 2023.

The City argued that just because bail was granted does not mean the case is weak as part of a decision on bail is a person's contacts with the community and it is not about evidence about a case. It argued the matter before the Board was not just the Lopez arrest as that was the cherry on top since there were other issues prior to the arrest. It argued the infractions started in 2020 with the shooting when the Department reinstated the License after that revocation decision. The City argued it did not take an appeal of the Department's decision because it revoked the entertainment license on the same grounds, and Supreme Court denied the petition for *writ of certiorari* for the revocation of the entertainment license.

The City argued the infractions submitted to the Board were mostly from March, 2023 to June, 2024. It argued the Appellant has a history of systemic pattern of violations so that the revocation was based on three (3) years of accumulated violations and infractions. It argued that

based on Blair's affidavit, she has been running the club the entire time so she is responsible for the infractions. It argued there is no requirement the violations be adjudicated, but rather they were addressed by the Board. It argued the Lopez incident is not an isolated incident but part of a pattern of behavior. It argued that just because there were other locations involved in the drug conspiracy does not mean the Appellant had nothing to do with the conspiracy. It argued the paraphernalia recovered was indicative of drug trafficking and packaging.

In reply, the Appellant argued the Board was trying to resurrect allegations from before 2022 that already had been denied by the Department. It argued the Supreme Court's denial of the *writ* request regarding the entertainment license is irrelevant to the history of discipline on the Appellant's liquor license. The Appellant argued that the City's own ordinance (§ 5.04.07) requires a hearing, and there were no hearings on the allegations based on the police reports, and no findings by the Board about those reports but rather the November hearing was all about Lopez's arrest.

The City further argued that the packaging of narcotics was definitely shown at the bail hearing. It argued that it is not necessarily contending that Lopez is selling drugs at the Appellant's, but that Lopez was involved with the conspiracy, and that is part of a pattern of bad behavior.

D. When Revocation of Liquor License is Justified

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 gambling or unlawful gaming to be carried on 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 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 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.

In revoking or suspending a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. Rather, the Rhode Island Supreme Court held in *Cesaroni* at 295-296 as follows:

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

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

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

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

Thus, a liquor licensee has the “responsibility to control the conduct of its patrons both within and without the premises in a manner so that the laws and regulations to which the license is subject will not be violated.” *Schillers, Inc. v. Pastore*, 419 A. 2d 859 (R.I. 1980). In a denial of renewal matter, *A.J.C. Enterprises v. Pastore*, 473 A.2d 269, 275 (R.I. 1984) found in discussing the disorderly provisions that “[T]here need not be a direct causal link between incidents occurring outside or nearby a drinking establishment and its patrons. Such a link is established

when it can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within.”

A liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali v. Smith*, 254 A.2d 766 (R.I. 1969). It is not a defense that a licensee is not aware of the violations or provided supervision to try to prevent violation. While such a responsibility may be onerous, a licensee is subject to such a burden by the legislature and accepted such conditions by becoming licensed. *Therault v. O’Dowd*, 223 A.2d 841 (R.I. 1966). See *Scialo v. Smith*, 99 R.I. 738 (R.I. 1965). As the Supreme Court found, “the responsibility of a licensee for the conduct of his patrons within the licensed premises that makes it disorderly within the meaning of the statute is established by evidence showing a toleration or acquiescence in such conduct by the licensee.” *Cesaroni*, at 296. *A.J.C. Enterprises; Schillers; and Furtado v. Sarkas*, 118 R.I. 218 (1977).

Thus, *Cesaroni* speaks of conduct that occurs within premises where liquor is dispensed under a license that causes either directly or indirectly conditions in the neighborhood that annoy the neighborhood (e.g. disorderly conditions). *A.J.C. Enterprises* speaks of making an inference that the disturbance outside had their origins within the premises. To find disorderly conduct, the case law speaks of the conduct “within” the premises and not the parking lot.

The Department has a long line of cases regarding progressive discipline and upholding the same. The progressive discipline imposed on a licensee depends on the violations and the circumstances of a licensee’s violation(s). 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, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.) (several disturbances and a shooting on one night justified revocation) and *Pakse Market Corp.* 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); and *PAP Restaurant, Inc. v. d/b/a Tailgate's Grill and Bar v. Town of Smithfield, Board of License Commissioners*, DBR No.: 03-L-0019 (5/8/03) (series of infractions justified revocation).

E. Sanctions Prior to July 1, 2024

The City's exhibits do not include the Appellant's licensing history so it is unclear when it was first licensed. However, the Appellant indicated in its brief to the Board that it was licensed in or about 2019. Appellant's Exhibit I. On April 1, 2022, the City revoked the Appellant's License due to a shooting that took place outside the establishment. After a full hearing before the Department with testimony by a police officer and the Appellant's security staff, and review of video inside and outside the establishment, the Department issued a decision on August 17, 2022 overturning the City's revocation of License. The decision concluded that based on all the evidence, no direct or indirect connection could be shown between the shooters and any activity within the premises. That decision concluded as follows:

The case law is consistently clear that a liquor licensee is responsible for activity outside that can be directly or indirectly inferred to arise from the "conduct within." *Cesaroni* at 296. In this matter, there was no evidence that the shooting outside can be linked indirectly or directly to any conduct inside the Appellant. Therefore, there can be no finding that the Appellant violated R.I. Gen. Laws § 3-5-23. *401 Nightlife, LLC d/b/a Pregame Lounge v. City of Cranston, City Council, Safety Services Committee*, DBR No. 22LQ006 (8/17/22) at p. 13.

Thus, while at the Department hearing (and the Board hearing), the City spoke of a shooting at the Appellant's, that shooting is not relevant to any prior discipline of the Appellant's liquor license. It is irrelevant to the liquor license disciplinary history that the Board revoked the Appellant's entertainment license on what it said were the same facts and the Rhode Island Supreme Court in its discretion denied the petition of *writ of certiorari* for that denial. The liquor

license is subject to the liquor licensing statutes and those statutory and regulatory requirements as discussed in case law. The City spoke of a continuous pattern of behavior by the Appellant since 2020 including the shooting. This is not accurate. The 2022 decision did not note any discipline or sanctions imposed on the Appellant's License prior to the shooting incident. The City did not provide any evidence at the hearing that the Appellant's License was subject to any discipline or sanctions prior to the 2022 shooting or prior to the 2024 revocation.

A review of the police reports submitted to the Board reveal as follows:

On March 31, 2023, a woman was involved in an altercation inside the club. The people were then kicked out. The woman then left and came back after the club closed to pick up a friend. At that time, the woman was assaulted. It is not stated in the police report at what time the woman was kicked out of the club so it is unclear what the timeline was between when she left the club and then returned to pick up her friend. Nor is it clear whether the suspect in the assault was involved in the inside altercation that caused the woman to be ejected or whether there had been another altercation. Without more information, it is impossible to conclude that there is a direct or indirect connection between Appellant and the assault. Obviously, if the woman was assaulted as part of the altercation while being ejected, that connection would be clear. But the delay and the missing facts make it hard to conclude one way or another. *Italo-American Citizens Club of Warren v. Town of Warren*, Board of Licenses, DBR No.: 21LQ006 (10/14/22). The police report refers to an altercation inside whereby the woman was ejected. Presumably, if the Appellant ejected someone there was some kind of disorderly conduct in the club. However, it cannot be determined from the police report the extent of any disorderly conduct but presumably if people were ejected, it was not extensive. City's Exhibit Four (4) (police report).

On July 3, 2023, there was fighting outside the club. The police report detailed there were complaints from residents that in general the Appellant operates after hours and patrons do not disperse when exiting the club. However, for this date, there was no information whether a fight had occurred inside the club prior to the outside fight. However, the police report noted that at 3:00 a.m., there were still 20 people inside the Appellant which is a violation of the after hours provision of the LCA Regulation.⁸ City's Exhibit Five (5) (police report).

On August 21, 2023, there was a call about an underage patron at the club but no underaged patron was found. City's Exhibit Six (6) (police report).

Pursuant to R.I. Gen. Laws § 3-5-8, Class BV licenses expire on December 1 of every year. There was no evidence that any of these 2023 incidences were brought up at the Appellant's renewal hearing before the Board. Certainly, an issue about failing to disperse patrons after closing could result in requiring more security on the premises or a better plan for ensuring patrons disperse once outside as a condition of renewal.

On April 15, 2024, the police report indicated that a large crowd was outside the Appellant's with various physical disturbances with one (1) person appearing to be the instigator and carrying a knife. The police report indicated that there often were large disturbances on Thursdays and Sundays in relation to the Appellant at closing time. It is most likely something occurred inside as

⁸ Section 1.4.18 of the LCA Regulation provides in part as follows:

Hours of Business - Retail

A. All patrons shall leave the licensed premises not later than 1:20 a.m. where the licensee is permitted to remain open until 1:00 a.m. Last call shall be at 12:45 a.m. Where licensee is permitted by local ordinance or permit to remain open until 2:00 a.m. all patrons must leave the licensed establishment by 2:00 a.m. All employees shall leave the licensed premises within one-half hour after the required closing time; provided the owner or employees may enter or be in a licensed establishment at any time for a legitimate business purpose with approval from the local police department. This paragraph shall not apply to a Class B-C license.

B. The owner or employees may not consume alcoholic beverages on the premises after the legal closing time or before the legal opening time.

D. No one, other than the owner, employees, or law enforcement personnel, shall be admitted to the premises after the required closing time or before legal opening time.

the instigator was carrying on, but there was no testimony or evidence fleshing out what happened that night. City's Exhibit Seven (7) (police report).

On April 22, 2024, there were people inside past closing time. While Lopez claimed the 40 people were employees, the Appellant had not called for an extension. This is another after hours violation of the LCA Regulation. City's Exhibit Eight (8) (police report).

On April 29, 2024, the report indicated that as people were exiting the club, they were screaming and trying to fight each other as the security guards were forcing them outside. This would seem that there may have been some disorderly conduct inside the club that spilled out as patrons were exiting. City's Exhibit Nine (9) (police report).

On June 24, 2024, the report indicated that the police were dispatched to a large disturbance outside in the road and people were dispersed without incident. The report noted that the police are consistently being dispatched to this location for disturbance especially on Sunday nights. City's Exhibit Ten (10) (police report).

The 2024 police reports indicated that there were on-going problems with patrons exiting. It is unclear to the undersigned why such potential issues would not have been addressed previously in the 2023 renewal process or in a show cause process. Instead, the 2023 and 2024 police reports were all produced at the time Lopez was arrested, and it appears the City was trying to make those reports act as past discipline imposed prior to Lopez's arrest. However, the police reports do not represent any final sanctions on the Appellant for any liquor violations.

As stated above, 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. Here, there has been no progressive discipline. The Board contends that there have been ongoing issues with the Appellant for years but there have been no violations found by the Board

or sanctions imposed by the Board. Instead, the Board added the 2023 and 2024 police reports after Lopez was arrested. Now, the appeal to the Department is a *de novo* appeal. Thus, any error by the municipality of the type of hearing provided by the City in relation to the police report allegations which do not appear to comply with the City's ordinances are not relevant on appeal.⁹ The City did not bring the 2023 charges in 2023 for a hearing on the alleged violations (nor on the renewal). The 2024 police report charges were brought up initially at the July, 2024 hearing which was an emergency hearing so that hearing really was more reflective of Lopez's arrest as an emergency rather than allegations dating to 2023 in police reports.

By bringing the 2023 and 2024 police reports without any further evidence about the disturbances and timelines, it cannot be determined in some cases that there was disorderly conduct. It may have been if these matters were determined as they occurred with testimony and/or other evidence, the Board may have found the Appellant committed a series of violations and sanctions that reflect progressive discipline. Instead, there are two (2) after hours violations (July 3, 2023 and April 22, 2024) and disorderly conduct on March 31, 2023 and April 29, 2024. For the other reports, it cannot be conclusively determined what were the causes of the outside issues.

⁹ Cranston's Code of Ordinances provide in part as follows:

5.04.070 - Revocation for breach of peace, safety, general welfare.

The members of the safety services and licenses committee, after hearing with due notice to licensee, shall revoke a license and/or levy fines to insure compliance with Title 5 of the Cranston City Code under this chapter if said committee finds that activity from within the licensed premises proximately cause a nuisance, to wit, activity that:

A. Disrupts the peace and order within the municipality.

B. Threatens the health, safety and general welfare of the inhabitants of the municipality.

C. Eliminates the quiet enjoyment, comfort and convenience of the municipality and its inhabitants.

In addition to the power to revoke the license holder's license, the city of Cranston Safety Services Committee shall have the power to hear and adjudicate any and all violations of Title 5. Said hearings shall be conducted under oath and with witnesses called before the committee. In the event that the license holder, or other entity is found to be in violation of the license holder's responsibilities, said committee upon a vote of the preponderance of the committee, shall have the power to levy fines based upon the severity of the offense. The maximum fine levied shall not exceed five hundred dollars (\$500.00) unless otherwise specified by ordinance or state statute.

In terms of Lopez, he has been charged with several counts of manufacturing/deliver/possession with intent to deliver of various drugs as well as firearms violations. City's Exhibit Three (3). At the bail hearing, the detective testified that Lopez was never observed selling drugs. pp. 11-18. The detective also testified that no drugs were found at the Appellant's. p. 147. Appellant's Exhibits A and B (bail hearing transcripts). The City is not contending that there were drug sales inside the Appellant.

Alleged drug paraphernalia was found in a storage area at the Appellant's. The search warrant referred to the first floor and basement area to be searched. The Appellant contends that the basement area referred to in the search warrant (City's Exhibit One (1)) is really the storage area that is not connected to the Appellant's. The Appellant contends what was found is related to packaging hookah and not drugs. There was no evidence the items that were seized were located where patrons would be in the licensed area.

F. The Lopez Arrest

From *Cesaroni* in 1964 to *Schillers* in 1980 up until today, a liquor licensee is responsible for activities inside and outside its licensed premises. It does not matter how well a liquor licensee supervises such responsibilities since even the most responsible supervising licensee is still responsible for any violations. The Department considers it to be well settled and indisputable that under case law a liquor licensee is liable for the violative acts of his/her manager(s) and/or employee(s) regardless of the licensee's knowledge of occurrences. See *28 Prospect Hill Street, LLC d/b/a Café 28, a/k/a Café Craz v. City of Newport*, LCA-NE-01-02 (9/5/02).

In *Bandilli Café Corporation v. City of Pawtucket, Board of License Commissioners*, LCA-PA94-18 (12/9/94) in less than three (3) months, ten (10) undercover purchases of cocaine were made with the evidence showing that the owner was engaged in selling and most likely storing cocaine on the premises. That decision did not discuss any previous discipline, but the evidence

was of a high volume on-going drug trafficking with the owner even offering to sell drugs to a patron entering and not requesting any drugs. The liquor license was revoked.

In *Tel Aviv, LLC d/b/a Tel Aviv v. City of Providence, Board of Licenses*, DBR No.: 16LQ015 (12/18/16), the manager sold cocaine to a police officer causing a search warrant to issue. During the search, cocaine was found on the manager. The parties disputed whether it was for personal use or for sale. The evidence was that the manager had clean baggies consistent with selling the cocaine in future. *Tel Aviv* was a first offense, and the evidence was not anywhere near the level of drug trafficking at *Bandilli Café*. A 15 day suspension of the liquor license was imposed.

In this matter, there was no evidence of drug sales on the Appellant's premises. Lopez has not been convicted of any crimes; though, an administrative hearing requires a lower level of proof compared to a criminal trial. Nonetheless, the evidence at the bail hearing was that no drug sales occurred at the Appellant. Instead, there is a dispute over the drug paraphernalia found at the premises and whether the storage area is part of the Appellant's premise and whether the items found are even drug paraphernalia. However, it is clear the alleged drug paraphernalia was not found in any area used by patrons, and the evidence is that drugs were not being sold within the Appellant. Thus, unlike in *Tel Aviv*, there have been no arrests or convictions for drug dealing in relation to anyone while working at the Appellant. There was no evidence of narcotics trafficking within the Appellant.

Separate from whether Lopez is conducting any illegal activity at the Appellant, there is the issue of the suitability of Lopez as a licenseholder if indeed he is convicted of such charges. The issue of Lopez's suitability relies more on whether he is convicted of the various charges as nothing has been shown about any actions by Lopez within the licensed premises. It could be that a trial would flesh out more information about potential illegal activities at the licensed premises

but based on the evidence before the undersigned, there is no evidence of sales or possession of drug and/or drug paraphernalia within the licensed premises. The alleged drug paraphernalia was found at the building but in a storage area that apparently is not part of the licensed premises. If the evidence was that drug sales were occurring within the licensed premises, the matter would be on par with either *Tel Aviv* or *Bandilli Café*.

The Appellant has offered a solution to the conundrum of Lopez's role at the Appellant. While the Appellant disputes Lopez's criminal charges and argued based on the evidence Lopez was not selling drugs within the licensed premises, the Appellant has offered for Lopez to withdraw from the LLC. If Lopez is convicted of the charges, such an action answers the issue of whether the Appellant could continue to be considered suitable and fit as a licensee in light of such a conviction since Lopez would no longer be a member of the LLC.

Meanwhile, the City at this appeal hearing has demonstrated that in the last two (2) years, there were two (2) after hour violations and two (2) disorderly conduct violations. From the evidence, neither disorderly conduct violation was anything more than just altercations and screaming at exit time.

F. What Sanctions are Justified

The City has not demonstrated that a situation like *Bandilli Café* or *Tel Aviv* existed prior to Lopez's arrest. Rather it has demonstrated two (2) violations of R.I. Gen. Laws § 3-5-23 (two (2) disorderly conduct violations) and two (2) violations of R.I. Gen. Laws § 3-5-21 (two (2) after hour violations violating the LCA Regulation)

Based on the foregoing, the revocation of the Class BV is overturned. A Class B license cannot be used without a victualing license and the use of the Appellant's victualing license is dependent on a ruling by the Supreme Court. Nonetheless, the Department has authority over liquor

license appeals regardless of whether the victualing license has been revoked by the local licensing authority at the same time or not.

Nonetheless, in light of the pending criminal matter against Lopez and potential violations of the liquor licensing statute, and his offer to divest himself from the LLC, Lopez shall divest himself from the LLC within 60 days and in the meantime shall not be involved in the day to day running or operations of the Appellant.

The Appellant has been closed since July 1, 2024. No additional suspension for the statutory violations is warranted. However, if the Appellant is able to reopen with its Class BV liquor license, it shall have a police detail for Friday, Saturday, and Sunday nights and any night before a State holiday from 10:00 a.m. to past closing time. The police detail shall be imposed for 30 days, and at the end of the time, the Appellant and Board shall review if the police detail should be continued or if the Appellant can provide a suitable security plan for maintaining order upon exiting and ensuring the dispersal of patrons while exiting.

VI. FINDINGS OF FACT

1. On July 8, 2024, the Appellant filed an appeal pursuant to R.I. Gen. Laws § 3-7-21 with the Department over the Board's decision to revoke its Class BV License.
2. A hearing was held on December 9, 2024 with the parties resting on the record.
3. 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. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 3-7-21, R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*; and the LCA Regulation.

2. The Appellant violated R.I. Gen. Laws § 3-5-21 on July 3, 2023 and April 22, 2024.
3. The Appellant violated R.I. Gen. Laws § 3-5-23 on March 31, 2023 and April 29, 2024.
4. At this time, Lopez’s arrest has not necessarily risen to a violation of R.I. Gen. Laws § 3-5-21 and R.I. Gen. Laws § 3-5-23; however, it could be an issue dependent on the outcome of his criminal trial and/or if any other evidence comes to light.

VIII. RECOMMENDATION

Based on the foregoing, the Board’s revocation of the Appellant’s Class BV license is overturned. The Appellant twice violated R.I. Gen. Laws § 3-5-21 and twice violated R.I. Gen. Laws § 3-5-23. A police detail is imposed as detailed above, and Lopez shall divest himself from the LLC as detailed above.

Dated: January 17, 2025



 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:

ADOPT
 REJECT
 MODIFY

Dated: 1/29/2025


 Elizabeth Kelleher Dwyer, Esquire
 Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 29th day of January, 2025 that a copy of the within Decision was sent by first class mail, postage prepaid and by electronic delivery to the following: John M. Verdecchia, Esquire, Law Office of John M. Verdecchia, 400 Reservoir Ave., Ste 1C, Cranston, R.I. 02920 and Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, R.I. 02903 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Megan Mihara
Type name here
