

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

**Moe's Place Inc. d/b/a Passions Lounge,
Appellant,**

v.

**City of Providence, Board of Licenses,
Appellee.**

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DBR No.: 25LQ003

ORDER RE: MOTION FOR STAY

I. INTRODUCTION

This matter arose from a second motion for stay filed pursuant to R.I. Gen. Laws § 3-7-21 by Moe's Place Inc. d/b/a Passions Lounge ("Appellant") with the Department of Business Regulation ("Department") regarding an order issued by the City of Providence, Board of Licenses' ("Board") on May 29, 2025 closing the Appellant until a decision is made by the Board on June 5, 2025.¹ The Department's jurisdiction only relates to the Class BVX liquor license held by the Appellant, and the Board's closing of the Appellant acted as a suspension of the Appellant's liquor license.² This matter came before the undersigned on May 30, 2025 in her capacity as hearing officer delegated by the Director of Department.

¹ This matter initially began with a motion for stay after the Board continued its May 22, 2025 hearing until May 29, 2025. An order on the first motion for stay was issued on May 29, 2025.

² 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) (virtualing 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 virtualing license. At the first stay hearing, the parties indicated that the Appellant did not have an extended license; however, after the second stay hearing, the Appellant notified the parties that it was open until 2:00 a.m. at the weekend so presumably has an extended license.

II. TRAVEL OF MATTER

The Board convened an emergency hearing regarding the Respondent after there had been a shooting on May 17, 2025 in the vicinity of the Appellant. Said emergency hearing was held pursuant to Providence Charter section 1102. At the May 17, 2025 emergency hearing, the Appellant was closed for three (3) days. The Appellant voluntarily remained closed pending the scheduled full hearing for May 22, 2025 by the Board which was then continued until May 29, 2025 with the Appellant ordered to remain closed pending the hearing. The Board held a hearing on May 29, 2025 and scheduled the decision to be made on June 5, 2025. The Board ordered the Appellant to remain closed pending the June 5, 2025 Board decision hearing.

The Board reviewed the video of the incident in executive session.³ The City represented the video showed shoving inside the Appellant, the shooter showed a gun to the victim, and then the suspect followed the shooter outside the club and shot the victim. The Appellant did not agree there was a gun in the club. The City represented the gun was not pointed at the victim but was shown to the victim when inside.

The parties agreed that when the suspect entered the Appellant, there was only a pat down of the suspect suspect's back and not his front before he went through the metal detector with a woman and set off the metal detector. After the metal detector was set off, security only checked inside the woman's purse and did not pat the suspect down again.

The City represented that the Appellant's owner was seen talking to the suspect. The Appellant represented that the owner was not friends with the suspect and does not know his name but only knows him by sight from the club

³ The audio of the Board's discussion of the matter was not available at the time this order was written.

III. DISORDERLY CONDUCT AND CONDITIONS OF LICENSING

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).

R.I. Gen. Laws § 3-5-21 provides in part as follows:

Revocation or suspension of licenses – Fines for violating conditions of license.
(a) Every license is subject to revocation or suspension and a licensee is subject to fine by the board, body or official issuing the license, or by the department . . . for:
(1) Breach by the holder of the license of the conditions on which it was issued;
or
(2) Violation by the holder of the license of any rule or regulation applicable;
or

(4) Breach of any provisions of this chapter. ***

Maintaining enough security and providing security is a condition of liquor licensing. *FabCity Cigar Lounge, Inc. d/b/a FabCity Cigar Lounge v. Board of License Comm'ers 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). That is a condition of an issuance of a liquor license.

IV. ARGUMENTS

The Appellant argued that Board did not make a finding of an ongoing safety issue prior to ordering it to close pending the June 5, 2025 decision. The Board argued that it was relying on its prior decision on May 22, 2025 to find a public safety issue. The City argued that the video showed insufficient security procedures.

V. STANDARD FOR ISSUANCE OF A STAY

A stay will not be issued unless the party seeking the stay makes a “strong showing” that “(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest.” *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976). 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). While appeals before the Department do not fall under R.I. Gen. Laws § 42-35-15(c), it is instructive to note that the *Department of Corrections* found it a matter of discretion to hold matters in *status quo* pending review of an agency decision on its merits.

VI. DISCUSSION

A liquor appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21⁴ 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).⁵

⁴ R.I. Gen. Laws § 3-7-21(a) provides 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. Notice of the decision or order shall be given by the local or licensing board to the applicant within twenty-four (24) hours after the making of its decision or order and the decision or order shall not be suspended except by the order of the director.

⁵ See also R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, and R. I. Gen. Laws § 42-14-1 *et seq.*

Because the Department's has such broad and comprehensive control over traffic in intoxicating liquor, its power has been referred to as a "super-licensing board." *Baginski v. Alcoholic Beverage Comm.*, 4 A.2d 265, 267 (R.I. 1939). See also *Board of Police Com'rs v. Reynolds*, 133 A.2d 737 (R.I. 1957). The purpose of this authority is to ensure the uniform and consistent regulation of liquor statewide. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964).

A decision has not yet been made by the Board. The Appellant has been closed since May 17, 2025. The Appellant represented that it was prepared to obtain new security and improve procedures but was not able to present that to the Board. Apparently, before voting to close the Appellant, one Board member spoke of imposing reduced hours and imposing a police detail, another member indicated that it did not matter if the Appellant opened or closed, and another member indicated the gun and suspect had not been found. The Board then voted to keep the Appellant closed pending the decision.

The Appellant is concerned that it could be continually closed without benefit of a final decision and without a finding of an ongoing public safety issue. It would appear the Board shall be fully discussing the options available at its June 5, 2025 meeting regarding any violations and possible sanctions.

If the Board on June 5, 2025 finds a disorderly violation and/or breach of conditions' violation, the sanction it imposes could be a suspension of the BV or BVX license or both (which would include the time it has already served). Or it could be a revocation of the extended license. Or a revocation of both liquor licenses. If it does not revoke the liquor license(s) but imposes a suspension, the Board will undoubtedly impose some further security conditions. It could require that if a patron fails the metal detector, the person needs to be wanded and not just subject to another pat down or it could require the usage of metal detectors, wandings, and pat downs for all


patrons. It could mandate police details. The parties may also be able to enter into a resolution without a hearing.

The undersigned is concerned about the security of the Appellant. An appeal to the Department is considered *de novo*. The undersigned could grant a stay with reduced hours and increased security. However, it will defer to the Board to decide whether there was a violation(s) and if so, what should be the sanction (or for the parties to resolve the matter).⁶

VI. CONCLUSION AND RECOMMENDATION

Based on the foregoing, the undersigned recommends the following: The undersigned does not recommend a stay of the suspension of the Appellant's liquor license pending the Board's June 5, 2025 hearing.

Dated: June 2, 2025



Catherine R. Warren
Hearing Officer

INTERIM ORDER

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

☒ ADOPT
☐ REJECT
☐ MODIFY

Dated: June 2, 2025


Elizabeth Kelleher Dwyer, Esquire
Director

⁶ The undersigned is mindful that there appears to be at the very least a security failing that would warrant some kind of suspension so the Appellant being closed for almost three (3) weeks prior to a decision is compatible with any potential suspension but this calculation changes in terms of a request for stay if the license(s) was/were revoked in light of the necessity for the opportunity for a meaningful hearing.

NOTICE OF APPELLATE RIGHTS

THIS INTERLOCUTORY ORDER MAYBE REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35-15(a) 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 A PETITION DOES NOT STAY ENFORCEMENT OF THIS ORDER.

CERTIFICATION

I hereby certify on this 2nd day of June, 2025 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: Jim Smith, 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 Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Megan Mihara
