

**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

DIRECTOR'S DECISION AND ORDER

The Director rejects the Hearing Officer's recommendation in the proposed Order Re: Motion for Stay attached hereto.

Although in considering a request for stay, the Department may determine to maintain the *status quo* in its discretion, the Department declines to do so here. The Department denied two prior requests for a stay by Orders issued May 29, 2025, and June 2, 2025. The attached reflects no testimony or other evidence presented to show a material change of facts since the prior orders. Moe's Place Inc. d/b/a/ Passions Lounge ("Appellant") has not made the required strong showing that it will prevail on the merits of its appeal, it will suffer irreparable harm if the stay is not granted, and issuance of a stay will not harm the public interest.

Based upon the foregoing, the Appellant's request to stay the Board's decision is denied. Nothing herein precludes the parties from working together to conduct a full hearing on an expedited basis.

Dated June 11, 2025



Elizabeth Kelleher Dwyer, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION 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 APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 12th day of June, 2025, that a copy of the within Decision and Order was sent by first class mail, postage prepaid, and by electronic delivery to the following: Peter Petrarca, Esquire, Petrarca & Petrarca 330 Silver Spring Street, Providence, RI 02903 peter330350@gmail.com, James Smith, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903 JimSmith@providenceri.gov, Louis A. DeSimone, Esquire, 1554 Cranston Street, Cranston, RI 02920 ldatty@gmail.com, and by electronic-delivery to Pamela J. Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920 pamela.toro@dbr.ri.gov.



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ORDER RE: MOTION FOR STAY

I. INTRODUCTION

This matter arose from a third motion for stay and an appeal 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 June 5, 2025 revoking the Appellant's Class BVX liquor license.^{1 2} This matter came before the undersigned on June 9, 2025 in her capacity as hearing officer delegated by the Director of 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.*

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. A second motion for stay was filed after the Board continued the decision until June 5, 2025. A second stay order was issued on June 2, 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.

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). See also *Board of Police Com'rs v. Reynolds*, 133 A.2d 737 (R.I. 1957). The purpose of this authority is to ensure the uniform and consistent regulation of liquor statewide. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964).

III. 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.

At the May 29, 2025 hearing, the Board reviewed the video of the incident in executive session. The City and Board argued 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 the metal detector was set off. After the metal detector was set off, security only checked inside the woman's purse and did not pat the suspect down again.

IV. CONDITIONS OF LICENSING

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).

V. 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 granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest.” Despite the ruling in *Harsch*, the Supreme Court in *Department of Corrections v. Rhode Island State Labor Relations Board*, 658 A.2d 509 (R.I. 1995) found that *Harsch* was not necessarily applicable in all agency actions and the Court could maintain the *status*

quo in its discretion when reviewing an administrative decision pursuant to R.I. Gen. Laws § 42-35-15(c). The issue before the undersigned is a motion to stay a Decision which is subject to a *de novo* appeal and does not fall under R.I. Gen. Laws § 42-35-15(c). Nonetheless, it is instructive to note that the *Department of Corrections* found it a matter of discretion to hold matters in *status quo* pending review of an agency decision on its merits.

VI. PRIOR DISCIPLINE

The Appellant has previously been disciplined for various violations but the Board only reviewed discipline since 2023 which were for violations such as entertainment without a license, disorderly conduct, hours of operation, refusing entry to the police. A two (2) day, seven (7) day, and four (4) day suspensions were imposed as well as 21 days of reduced hours.

At the stay hearing, the Board represented that it only reviews discipline within the last three (3) years. It represented that the three (3) year look back is used for underage drinking so for consistency, the Board uses that time period for all violations.³

VII. ARGUMENTS AND DISCUSSION

The information received by the undersigned is based on representations of the parties as well as the undersigned listening to the June 5, 2025 decision hearing.⁴

On review of the June 5, 2025 hearing, the decision made to revoke was based on the Appellant's licensing history and security failures on May 17, 2025. Prior to making the decision, the Board chair indicated that he was struggling to find any nexus between the shooting and the Appellant. However, the chair indicated an issue with the security failures. Therefore, the

³ It is noted that the Board only reviewed the past three (3) years but in 2014, the Appellant's extended license was revoked. *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ054 (12/3/14). As the Appellant currently has an extended license, the Board must have allowed it to regain its extended license.

⁴ <https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=15143&Format=Agenda> (Board's June 5, 2025 hearing).

Board did not find any disorderly conduct. The referenced shooting took place outside of the Appellant. The revocation was based on the Appellant's licensing history and security failures.

The City argued that due the security failures, there was still a public safety issue. The Board was very concerned that the Appellant's employees did not react to the gun being shown on the video. The Appellant argued that when the video was shown to the Board, it was slowed down and repeated so when the Board members found a gun was shown, they were watching and rewatching a slowed down video. It argued the fact that no one reacted on the video meant that either there was no gun in the club or if there was gun, it could not be seen in real time. The City represented the fact that no one the club reacted to the gun could mean that no one thought a gun was out of the ordinary or was concerned.

The Appellant represented that its security was being performed in house. It represented that it was willing to hire a third party independent security company.

The Board and the City pointed to how even when the suspect seemed to set off the metal detector, he was not checked. And they represented the video showed him speaking to the owner and D.J. after he went through the metal detector.

As noted in *FabCity*, the job of security is to be proactive in terms of potential issues and to be reactive as well to what is going on with a licensee's patrons.

In this matter, it appears that it will be shown there were security failures which is a breach of conditions of licensing. Thus, the issue will be what is the appropriate discipline for the Appellant's violations. These violations are not the first violations by the Appellant. Rather there have been many violations in the past three (3) years that have resulted in various short suspensions so that the Appellant is subject to progressive discipline. The Appellant currently has been closed for over 20 days.

VIII. RECOMMENDATION

Applying the stay criteria, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. However, it is discretionary to issue a stay in order to maintain the *status quo* pending an appeal. If a stay is not granted for the revocation, the Appellant will not have a meaningful appeal. At the same time, there is a public interest in maintaining the public safety of liquor licensees. To ensure public safety, the Appellant shall operate on reduced hours and provide new security procedures. The granting of a partial stay maintains the *status quo* pending the full hearing. Thus, the stay will be conditioned on a midnight closing every night and police detail (two-person) at night (approximately 9:00 p.m. to 1:00 a.m.) on Friday and Saturday nights and any night before a State holiday and on State holidays. Furthermore, prior to the Appellant beginning to serve alcohol again, the Appellant must provide the Board with its written safety plan which shall incorporate the provision of security by an outside third party security vendor. This security plan shall include violence prevention and response procedures.⁵

Dated: JUNE 10, 2025


Catherine R. Warren
Hearing Officer

⁵ The parties may agree to a modification of the stay if they choose. The parties could also enter into a settlement if they desire.

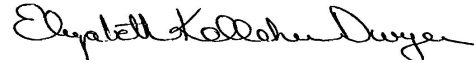
The security plan shall include detailed pat down procedures, and the usage of metal detectors and wandings on all patrons.

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
____ X REJECT Sec.VIII - see attached
____ MODIFY Director's Decision and Order

Dated: 6/11/2025



Elizabeth Kelleher Dwyer, Esquire
Director

A hearing will be scheduled on a mutually convenient date to be determined by the parties.⁶

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 12th 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.



⁶ Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant is responsible for the stenographer.