

**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

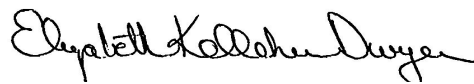
DIRECTOR'S DECISION AND ORDER

The Director rejects the Hearing Officer's recommendation in the proposed Decision attached hereto.

The testimonial and video surveillance evidence presented by the City confirms Appellant's egregious security failures in violation of R.I. Gen. Laws § 3-5-21, including deficient, flawed and inconsistently applied pat downs, metal detector walk throughs and altercation response removal procedures. As a result, the suspect was able to bring a gun into the club. After the victim was removed from the club, the suspect was able to exhibit the gun to others even upon exiting the club. The Appellant presented no refuting testimony or other evidence. These facts, when added to the prior discipline, support the Board's decision below.

Based upon the foregoing, the Board's June 5, 2025 decision to revoke the Appellant's Class BVX liquor license is hereby affirmed.

Dated July 24, 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 APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 24th day of July, 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.

Megan Mihara

**STATE OF RHODE ISLAND
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DECISION

I. INTRODUCTION

This matter arose from a third motion for stay and an appeal filed on June 5, 2025 by Moe's Place Inc. d/b/a Passions Lounge ("Appellant" or "Passions") pursuant to R.I. Gen. Laws § 3-7-21 with the Department of Business Regulation ("Department") regarding a decision by the City of Providence, Board of Licenses' ("Board") taken on June 5, 2025 to revoke the Appellant's Class BVX liquor license ("License").^{1 2} A hearing³ was held on June 23, 2025 with the parties represented by counsel. The record was held open June 27, 2025 for the City to submit the certified record. City's Exhibit One (1). The Appellant timely filed a brief on July 11, 2025. The Board rested on arguments made during hearing.

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. A third motion for stay was filed on June 5, 2025 with a third stay order being issued on June 12, 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).

³ Pursuant to a delegation of authority by the director of the Department.

II. JURISDICTION

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.*

III. ISSUE

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

IV. MATERIAL FACTS AND TESTIMONY

This matter does not involve a finding of disorderly conduct. Rather the violation found by the Board was the Appellant breached the conditions of licensing and the laws of the state by its security failures by allowing a firearm into the club. See Board's June 5, 2025 decision letter contained in City's Exhibit One (1).

Captain Luis San Lucas ("San Lucas"), Providence Police Department ("PPD"), testified on behalf of the Board. He testified that at approximately 2:10 a.m. on May 17, 2025, he was on a private detail assigned to Rhode Island Hospital. He testified two (2) women brought in a man to the emergency room who had been shot, and when he asked them where it occurred, one woman said they had been at Passions. There was no cross-examination.

Detective Jeremy Doucette ("Doucette"), PPD, testified on behalf of the Board. He testified he heard San Lucas make a radio transmission there was a shooting victim at the hospital who was claiming he had been shot at Passions. He testified he went to the Appellant and spoke to the owner who said he was not aware of anything happening inside or outside the club. He testified the Board closed the Appellant by emergency order and issued a subpoena for its video, but the Appellant's owner only provided bits of the video in response to the subpoena. He testified the PPD obtained a search warrant and took the entire video hard drive, and Detective Northrup extracted the video,

and they reviewed it and pared it down to the relevant parts. Surveillance video taken inside and outside of the Appellant was entered into evidence. City's Exhibit Two (2).

Doucette testified to what could be seen on the various videos inside and outside of the Appellant. He testified the individual who went into the club before the suspect [in the shooting outside]⁴ was patted down in front and back by security but when the suspect came up to the door, he spun around and was only patted down on his back. He testified the club's metal detector has lights on its top and side that light up when triggered. He testified that after the pat down, the suspect walked through the metal detector with a woman behind him. He testified the metal detector lit up, and security stopped them, but security only looked in the woman's purse, and there were no further pat downs.

Doucette testified at one point inside the club, it appeared the suspect and victim [of outside shooting] touched each other and turned toward each other. He testified the suspect's female friend and other people moved between them, and a security guard came over. He testified the victim was separated from the suspect, and at that point the victim was removed from area and left the club. He testified that after the victim was removed, the suspect showed a gun in his right hand, and it looked like he was trying to show it in a sideways manner. He testified that when the suspect walked to the door, the gun was in his right hand as he exited the club.⁵

On cross-examination, Doucette testified there was a pat down of the suspect and when the metal detector went off, the female friend went to the female security guard. He testified the video showed the suspect entering with the woman and going through the metal detector together.

⁴ For ease of reference, the individuals were called suspect and victim in reference to what happened later outside.

⁵ Doucette also testified about the outside shooting, but the Board did not find any disorderly conduct in relation to the shooting that took place outside, and as discussed below, the undersigned also only found security violations.

On the undersigned's review of the videos, camera 4 showed patrons that entered before and after the suspect and his friend also set off the metal detector and were not further scrutinized. Cameras 9 and 10 showed the suspect walking briefly at one point (around 12:32:59 a.m.)⁵ with what appears to be a gun and then at 12:33:16 a.m., the suspect lifted his arm and showed someone (a man with long hair) the gun. The handgun can be clearly seen at that point on the video. When the suspect exited the club at 12:33:36 a.m. (camera 4), he was holding the gun by his side. There was also a still photograph of him taken from the video with him holding the gun when exiting in the City's Exhibit Two (2).

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 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). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

⁵ It is noted that is the time on the video. The parties agreed that the time on the video was 77 minutes slower than the actual time.

B. 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 *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).

⁶ At that time the alcoholic beverage commission.

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.

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 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.) (upholding revocation for a series on infractions). 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).

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. *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 *Parenti v. McConaghy*, 2006 WL 1314255 (R.I. Super.); and *Manny’s Café, Inc. v. Tiverton Board of Commissioners*, DBR 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.

C. Arguments

The Appellant argued the suspect did not bring a gun into the club, but even if a gun was brought into the club, there was no nexus between the shooting outside and the gun inside the premises. It argued there was a pat down prior to the suspect entering the club. It argued the appropriate penalties for any security failures would be time served, and the Appellant be required to use a third party security company.

Neither the Board nor the City filed a brief. However, throughout the stay hearings, they argued that revocation was justified on the security failures and licensing history.

D. Whether There Were Violations on May 17, 2025

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; or

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).

The job of security is to be proactive in terms of potential issues. And it is to be reactive as well to what is going on with a licensee's patrons. *FabCity*. This includes acting to diffuse potential situations that could become volatile and/or dangerous. Such actions should include monitoring the exiting of patrons and separating patrons when necessary. It includes the application of the security protocols in the appropriate and correct manner.

Here, the security failures included the failure to pat down the suspect properly prior to going through the metal detector. The suspect and his friend walked through the metal detector together and set it off. After setting off the metal detector, the friend's purse was checked, but nothing else was done to check either the suspect or his friend. Other patrons who set off the metal detector also were not further checked.

The Appellant might as well not have had a metal detector as it was not used properly. It failed to pat down the suspect prior to entrance and failed to further check the suspect and his

friend after they set off the metal detector. This failure allowed the suspect to bring a gun into the Appellant where he carried it around and no one noticed.

The Appellant violated R.I. Gen. Laws § 3-5-21 by failing to provide security and implement the appropriate security protocols.

E. Prior Discipline

The City's certified record shows the following prior discipline: For a disturbance, entertainment without a license, unlicensed floor hosts, and hours of operation on April 16 and September 19, 2024, the Appellant received a four (4) day closure and 21 day reduction in hours with a 30 day suspension held in abeyance until January 31, 2025.

The Appellant received a seven (7) day closure for four (4) different incident dates in 2023 for three (3) counts of hours of operation as well as a denial of access and a disturbance.

On March 16, 2023, the Appellant received a warning for a disturbance, a \$250 administrative penalty for hours of operation, two (2) day closure for refusing assess on two (2) different days, and a warning for entertainment without a license.

The Board only looked back for three (3) years, but it is noted that prior to 2023, there was a two (2) day and one (1) day closure in 2019 and 2018 respectively for disorderly conduct. In 2017, there were some small administrative penalties imposed for hours of operation and entertainment without a license violations. In 2016, the Appellant received a seven (7) day closure for hours of operation and entertainment without a license violations that occurred on four (4) different days. In 2015, there was a \$750 administrative penalty for hours of operation.

F. The Sanctions

The issue is what is the appropriate sanction for the security failure violations. In *Ciello, LLC d/b/a Luv*, there was a shooting outside that was not connected to conduct inside, but there was a severe security failure in terms of maintaining security as patrons exited. In that matter,

there were not enough security inside to handle a minor disturbance and patrons exiting at closing time at the same time. The security violations in *Luv* merited the extended license being suspended for 180 days and the BV license being suspended for 30 days. In that 2017 matter, there had been a prior disorderly conduct violation in 2015 (prior owner in 2015).

In *FabCity*, there was a shooting outside of the licensee among former patrons of the licensee but there was no direct or indirect connection between the inside and outside behavior in terms of disorderly conduct, but there was a failure to maintain security. That decision found that the severe security failures detailed in the 2017 *Luv* decision were similar to *FabCity*. The *FabCity* appellant did not have an extended Class BVX so that appellant's license was suspended for 60 days and a police detail on weekend nights (Friday and Saturday nights) and before State holidays for 60 days with the local authority to review to decide whether to continue or not was imposed.

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 disorderly conduct inside the Appellant that resulted in the firing of a gun into the crowd and wounding of patrons. That appellant had a strict security plan that it did not follow in that it opened with only eight (8) of the 14 security staff and a gun was most likely passed inside via an open and unstaffed door. That appellant argued it had already arranged to have new security prior to the shooting that was to start within one (1) week but presented no evidence of that arrangement. The Appellant was found to have committed a disorderly conduct violation as well as egregious security failures as in *FabCity* and *Luv*. The Appellant had prior violations but no disorderly conduct violations. Its disorderly conduct and security violations merited the revocation of that appellant's Class BV as well as its extended license.

The severe security failures detailed in the 2017 *Luv* decision and *CityFab* are similar to this matter. *Supra*. Unlike *Truth VIP*, there was no disorderly conduct in this matter.

The Appellant's discipline history mostly includes several hours of operation and entertainment without a license violations. It had disturbance in 2024 that along with other violations merited a four (4) day closure and 21 day reduction of hours. Similarly, in 2023, it had a disturbance and three (3) counts of hours of operation and a denial of access that merited a seven (7) day closure. The other disturbance in 2023 only merited a warning. It was closed for two (2) days in 2023 for refusing access.

FabCity had no prior discipline. *Luv* had a disorderly conduct violation two (2) years prior. In this situation, the Appellant had various violations of hours of operation, refusing access, and entertainment without a license as well as disorderly conduct that have merited recent suspensions. It now has committed egregious security violations.

In light of the Appellant's security failures and past violations and consistent with similar prior decisions, the Appellant's extended license (2:00 a.m. "X") should be revoked.

In *Luv*, the BV license was suspended for 30 days. The Appellant has more prior discipline than the licensee in *Luv*. This justifies a longer suspension for the Appellant. Thus, the Appellant's Class BV liquor license shall be suspended for 75 days (which includes time served). However, 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.

In addition, the Appellant shall maintain a police detail on weekend nights (Friday and Saturday nights) and any night before a State holiday as well as on a State holiday. The condition of the police detail shall be reviewed by the Board after 60 days from the execution of this decision to decide whether to continue the police detail or not.

VI. FINDINGS OF FACT

1. On June 5, 2025, the Board revoked the Appellant's License.
2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed the Board's decision to the Director of the Department.
3. A *de novo* hearing was held on June 23, 2025. The City submitted the certified record by June 27, 2025. The Appellant submitted a brief by July 11, 2025.
4. 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 violated R.I. Gen. Laws § 3-5-21 on May 17, 2025 by its security failures on May 17, 2025.


VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that pursuant to R.I. Gen. Laws § 3-5-21, sanctions shall be imposed as follows:

- 1) the Appellant's extended license (2:00 a.m. "X") shall be revoked;
- 2) the Appellant's Class BV liquor license shall be suspended for 75 days (which includes time served);
- 3) 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; and

4) the Appellant shall maintain a police detail on weekend nights (Friday and Saturday nights) and any night before a State holiday as well as on a State holiday. The condition of the police detail shall be reviewed by the Board after 60 days from the execution of this decision to decide whether to continue the police detail or not.

Dated: July 18, 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:

<u> </u>	ADOPT
<u> X </u>	REJECT (see Director's Decision and Order)
<u> </u>	MODIFY

Dated: 7/24/2025


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 24th day of July, 2025 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid and by electronic delivery to the following: James 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
