

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
JOHN O. PASTORE COMPLEX, BLDG 68-69  
1511 PONTIAC AVENUE  
CRANSTON, RI 02920

---

Ice Lounge, Inc. d/b/a Ice Lounge, Appellant,	:	
	:	
	:	
v.	:	DBR No.: 14LQ064
	:	
The City of Providence Board of Licenses, Appellee.	:	
	:	

---

DECISION

**I. INTRODUCTION**

On or about December 8, 2014, the Providence Board of Licenses (“Board” or “City”) notified Ice Lounge, Inc. d/b/a Ice Lounge (“Appellant” or “Ice”) that its Class BVX liquor license (“License”) located at 334 Atwells Avenue, Providence, Rhode Island had been revoked by the Board. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision to the Director of the Department of Business Regulation (“Department”) and a stay of the revocation was issued by the Department on December 16, 2014. Pursuant to R.I. Gen. Laws § 3-7-21(c),<sup>1</sup> the parties agreed to base the appeal on the record before the Board. Oral closings were held on February 10, 2015 before the undersigned sitting as a designee of the Director.

---

<sup>1</sup> R.I. Gen. Laws § 3-7-21 states in part as follows:  
Appeals from the local boards to director.  
\*\*\*

(c) The director may accept into evidence a stenographic transcript of a witness's sworn testimony presented before the local board that was subject to cross examination. This testimony may be rebutted by competent testimony presented at the hearing held by the director.

## **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. ISSUES**

Whether to uphold or overturn the Board's decision to revoke Appellant's License.

## **IV. MATERIAL FACTS AND TESTIMONY**

At the Board hearing, Patrol Officer Roberto Gutierrez ("Gutierrez") testified that on the night of October 26 to 27, 2014, he was in a patrol car covering Atwells Avenue. He testified that about 1:30 a.m., there was a small altercation in front of Ice and about two (2) minutes later, he saw someone yelling and an Ice staff member flagged him down and told him there was a disturbance in the club. He testified that Ice is on the second floor and there is a stairway from the street to the ground floor door. He testified that the staff member opened the door and people were exiting and he could hear yelling inside and there was fighting (punching and hitting) at the top of the stairs and security was trying to stop the fighting. He testified he called for backup and when backup arrived he went up the stairs into Ice. He testified that when he went upstairs, people noticed him and stopped fighting and started leaving. He testified that the bouncers and staff were helping to disperse the crowd. He testified that security was unable to stop the fighting. He testified there were about four (4) officers there and the fighting stopped once they entered. He testified that the club was in disarray and that there were tables all over the place and cake was on the floors, walls, and couches. He testified there were about 25 officers on the scene. He testified he did not see anyone injured but the patrons continued to argue as they left.

On cross-examination, Gutierrez testified that when he called for backup, he did not know how many people were inside the club. He testified that the standard procedure for a backup call is that all available officers respond so that 25 officers responded. He testified that he did not investigate the source of the problem but that the fight was at a birthday party. He testified that there were about 20 people inside Ice and he did not see any weapons. He testified that tables were turned over but were not used as weapons. He testified he went inside Ice at the request of the security and there were at least five (5) security members that were attempting to stop the altercation. He testified there were no patrons outside when he was flagged down but there were some people outside once he came back down stairs.

At the Board hearing, Patrol Officer Carlos Silva ("Silva") testified that he responded to the Appellant's for the disturbance based on Gutierrez's call. He testified that when he arrived, Gutierrez was standing at the door and that there were people outside and some people yelling. He testified that Gutierrez went upstairs but he stayed at the bottom of the stairs. He testified that he saw a patron exit with cuts on his face. He testified that the patrons exiting were arguing, yelling, and walking toward Sutton Street. He testified that there was rowdy behavior outside and some pushing. He testified that when he went inside the club, some furniture had been pushed over, cake was on the floor, and there were about six (6) officers in the club and no fighting.

Kelly Camp testified that she lives in a condominium at 333 Atwells Avenue directly across from the Appellant's. She testified that night, she heard music from the club and saw the police cars that responded. She testified that more than 20 people were outside tussling, screaming, yelling, and heading toward Sutton Street at about 2:00 a.m.

Donald Goodrich testified that he also lives at 333 Atwells Avenue and on that night, he saw patrons and police cars outside. He testified that he could see inside the club from his condominium and saw fighting and a patron with blood on him. He testified that he did not see any fighting outside but people were yelling, pushing, and shoving outside while walking towards Sutton Street and the police were dispersing them.

Joan Vornado testified that she lives at 333 Atwells Avenue and can see into Ice from her condominium and saw the disturbance that night. She testified that about 1:45 a.m. people started leaving the club in large numbers and people were fighting inside. She testified that the police came and people left and the police shouted at them to leave and people started walking to Sutton Street. She testified that she did not see fighting but saw groups moving toward the park area and there was a lot of yelling.

Patrol Officer Ricardo Silva testified that he responded to the disturbance at Ice and when he arrived, there was an argument at the top of the stairs and rowdy patrons were exiting. He testified that he did not know if there was a fight or disturbance.

Patrol Officer Britney Bordeaux testified that she was on patrol that night on Atwells Avenue and was across the street and walked over. She testified patrons were exiting from the club and were rowdy and loud. She testified she saw about five (5) or ten (10) people had blood on their shirts and one had a cut on his head. On cross-examination, she testified that she was outside for about 20 minutes and then went inside where people were still being rowdy but were not fighting.

Sergeant David Tejada testified that on the night in question, he responded at approximately at 2:00 a.m. in response to the call for backup. He testified that when he arrived, there were several police officers trying to disperse the crowd outside. He testified

that he went into the club and the club was being cleaned up. On cross-examination, he testified that he responded to Ice within four (4) minutes and when he arrived there was no physical fighting. He testified he arrived about 1:45 a.m. and left about 2:05 a.m. He testified there were about 20 officers on the scene. He testified that he left because there were enough officers there to handle it.

The Board took administrative notice of the 2009 application for the License by Ice before the Board. On April 17, 2009, the Appellant represented that it would be a lounge or café with food, appetizers, desserts, and not have entertainment. The Appellant represented that food sales would outweigh alcohol sales. The Board took administrative notice that on May 22, 2014, the Appellant's License was renewed with the condition of no public smoking including hookah. At that hearing, the Appellant's attorney was informed that there were reports that Appellant was advertising hookah which it could not do. The Board took administrative notice that on June 30, 2014, the Board ordered the Appellant to cease and desist offering hookah. Said transcripts of these hearing are in the certified record.

## 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 Rhode Island 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.*

### **B. Arguments**

The Board argued that the Appellant is strictly liable for the disturbance and the Appellant had ongoing violations of public smoking (hookah), unlicensed dancing, and unlicensed entertainment so were condoning illegality. The Board argued the Appellant misrepresented its business plan to the Board by claiming that it would be a café but instead it acted as a nightclub. The Board argued that the Appellant continued to offer hookah after it was ordered to cease and desist from offering hookah on June 30, 2014. The Board argued that there were a series of violations and then the fight which rises to the level of revocation. The Board argued that if the revocation is reduced to a suspension, administrative penalties should be imposed for the hookah smoking.

The Appellant argued that the Board failed to apply the standards of progressive discipline. The Appellant argued that prior to the October fight, there were no public safety violations. The Appellant argued that it called for police assistance for the disturbance and the fighting was quelled relatively quickly with no physical fighting spilling outside. The Appellant argued that the disturbance and smaller violations warranted a suspension and not a revocation. The Appellant agreed that it would no longer offer hookah smoking.

### C. The Appeal before the Department

The hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. See *A.J.C. 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); *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). Thus, while there was not a 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. 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.

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* 2002 WL 977812 (R.I. Super.) (overturning revocation as arbitrary and capricious).

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). 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).

#### **D. Sanctions Prior to October 27, 2014**

The License was issued on July 16, 2009. On July 9, 2014, an administrative penalty of \$2,400 was imposed for 16 counts of permitting smoking in a public place. On June 30, 2014, the Board ordered the Appellant to cease and desist from allowing hookah smoking. On March 28, 2013, a warning was issued for the sale of alcohol to underage patron. On November 28, 2011, an administrative penalty of \$1,500 was imposed for violating a cease and desist order and having entertainment without a license. On October 3, 2011, an administrative penalty of \$2,500 was imposed for various violations including entertainment without a license and violating conditions of licensing. On August 17, 2011, an



administrative penalty of \$500 was imposed for violating the hours of operation. On April 27, 2011, an administrative penalty of \$250 was imposed and a warning issued for having an entertainment without a license.

**E. The Violations**

The parties agreed that the two (2) issues on appeal were the 1) the fight in the early hours of October 27, 2014; and 2) the various violations to which the Respondent stipulated.<sup>2</sup>

**a. The October 27, 2014 Incident**

There is no dispute that in the early hours of October 27, 2014, a fight broke out inside the Appellant's causing disorderly conditions. The Appellant called the police to assist in breaking up the fight. The fight was physical but no weapons were used. The fight was quickly quelled by the police so that four (4) minutes within the first police officer arriving, there was no more physical fighting. (Time between Gutierrez calling for backup and Tejada arriving). Patrons exited the club yelling and shoving but not physically fighting.

**b. Other Violations**

The Appellant stipulated at the appeal and at the Board hearing to a variety of violations including public smoking (hookah), entertainment without a license, and unlicensed dances.

**F. When Revocation of License is Justified**

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

---

<sup>2</sup> The Appellant represented at the stay hearing that upon learning of the fight, the Board Chair sought to direct the Board to seek a revocation of License. See October 30, 2014 Board hearing transcript, pp. 5-6. Apparently due to concerns regarding possible violations of *Barbara Realty Company v. Zoning Board of Review*, 128 A.2d 342 (R.I. 1957) (zoning member expressed opinion on matter prior to hearing leading to the quashing of the decision) and *La Petite Auberge, Inc. v. R.I. Commission for Human Rights*, 419 A.2d 274 (R.I. 1980) (adjudicative and investigative roles of commission must be separate), the Appellant requested the Board Chair to recuse herself but she declined. The Appellant represented that it then agreed to the violations. On appeal, the Appellant again stipulated to the violations. At the Board hearing, the Board dismissed the allegations against the Appellant of an illegal transfer. It was agreed at the Department hearing that the Board would not be pursuing those allegations.

(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 revoking 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, 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). As the Supreme Court has 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. See also *AJC Enterprises; Schillers*; and *Furtado v. Sarkas*, 118 R.I. 218 (1977).<sup>3</sup>

Nonetheless, 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 *Stagebands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.) (disturbances and a shooting on one night justified revocation) and *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation of license when had four (4) incidents of underage sales within three (3) years). See also *Eagle Social Club d/b/a Ava's Wrath v. City of Providence, Board of Licenses*, DBR No.: 14LQ056 (12/23/14) (series of underage drinking justified revocation); *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); *PAP Restaurant, Inc. 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

---

<sup>3</sup> Under this strict standard imposed by the Rhode Island Supreme Court, the state of mind of the owner and/or licensee (etc.) is not relevant.

infractions justified revocation); and *Tropics, Inc. d/b/a Club Tropics v. City of Warwick, Board of Public Safety*, LCA-WA-97-05 (2/28/97) (series of infractions justified revocation).

Thus, the Department will uphold a revocation where an incident is so egregious as to justify revocation without progressive discipline.<sup>4</sup> However, the Department will decline to uphold a revocation where the violation is not so egregious or extreme and the local authority has not engaged in progressive discipline. *Infra*.

### **G. Business Plan**

The Department has previously ruled on the issue of a change in business format and disorderly conduct that may arise from such a change and such decisions inform the review of this matter. In *C & L Lounge, Inc. d/b/a Gabby's Bar and Grill*, the Department modified the town's revocation of the license to a 30 day suspension. In said matter, the Department found that the disorderly incidents were serious but not as severe as other cases where licenses were revoked. At that hearing, there was testimony regarding several incidences where the police had been called to the licensee's premises for overcrowding or unruly crowds outside the premises. The decision found that the licensee was negligent and responsible for such incidences but that the level of disorderly conduct did not rise to a level of revocation absent a progressive disciplinary pattern.<sup>5</sup>

---

<sup>4</sup> Progressive discipline relies on the sanctions imposed on a licensee by a licensing authority.

<sup>5</sup> In *Gabby's*, the licensee's owner represented at its licensing hearing that it would create a family dining atmosphere but at the revocation hearing, he testified that he had to diversify its format. *Gabby's* found that the licensee had adopted a new business format that caused regular disorderly incidents and that it had been warned by the town but had continued to operate with that type of business. The decision found that when a licensee changes its business format, it does so at its own peril and must face the consequences:

There is nothing per se illegal about a licensee changing his business format without Town approval to maximize profits. However, a Town need not tolerate a business format yielding negative neighborhood conditions it never bargained for, and specifically warned against, at the time of licensure.[footnote omitted] A liquor licensee has the responsibility to follow through on his representations of how he will conduct his business, made at the time of licensure. When a liquor licensee shifts his business format from his representations, he does so at his own peril. In the instant case the result of the shift was volatile disorderly conditions warned against as a condition of licensure. *Gabby's*, at 15.

In contrast, in *Tropics, Inc. d/b/a Club Tropics v. City of Warwick, Board of Public Safety*, LCA-WA-97-05 (2/28/97), the Department found that the revocation of license was justified. In *Tropics*, the decision found on eight (8) different evenings, there were dozens of people continually engaged in fisticuffs with each other and the police, mass arrests, severely injured patrons, and repetitive serious assaults on police officers. When *Tropics*' initially opened, it had an age 21 and over policy on Friday and Saturday nights and then one (1) year it later started to allow all ages fourteen (14) and over as a way to compete with Providence clubs. Like in *Gabby's*, the town did meet with the licensee to express concern.

In *Picasso's Pizza and Pub, Inc. d/b/a Score's RI Ultimate Sports Pub v. North Providence Board of License Commissioners*, DBR No. 03-L-0250 (6/3/04), the Department modified the town's revocation of license to a 30 day suspension. The town had found that the licensee was operating its business contrary to the representations on which the license was granted with various negative consequences as a result. At the initial licensing hearing, the licensee represented that the business would be for serving pizza and take-out pizza and would have a dining area for customers and some karaoke. The town council specifically requested a restriction against a nightclub environment to which the licensee agreed. The decision found that there were three (3) disorderly incidents and that the licensee was running an establishment more in line with a nightclub rather than a family restaurant. In *Picasso's*, the Department found that the licensee's misrepresentations or unilateral business format change did not justify revocation. The decision noted that the town had not imposed any progressive discipline so that this matter was similar to *Gabby's*.

While the Board may not have specifically placed conditions on the Appellant's License in 2009, the Board granted a license on the basis of the representations to the Board.

See *Gabby's*. A licensing board must be able to rely on the representations made by applicants regarding their business and the reasons to grant a license thereto. In 2014, the Board made clear upon the renewal hearing that providing hookah was not only a condition of licensing but was prohibited by statute.

The disorderly conduct complained of at Ice was not as extensive as that detailed in *Tropics*. Nor was it as extensive as that detailed in *Gabby's* or *Picasso's*. In both *Gabby's* and *Picasso's*, there were several incidents where there were disturbances inside or outside. Therefore, the change in Appellant's business format and the resulting conduct is more akin to *Gabby's* and *Picasso's* and even so there were no arrests made in connection with Appellant's operations. Both *Gabby's* and *Picasso's* found there was need for progressive discipline.

#### **H. What Sanction is Justified**

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 disorderly conduct. See *Therault*.

In this situation, the Appellant was licensed in 2009. For five (5) years, it never has been sanctioned for disorderly conditions. It recently was sanctioned for allowing hookah smoking even after agreeing at its renewal hearing in May, 2014 not to provide hookah.

As discussed above, the sanctions imposed for R.I. Gen. Laws § 3-5-23 vary depending on the type of disorderly conduct. Very serious and egregious violations that involve weapons and/or serious assaults could result in a revocation of license. E.g. *Cardio Enterprises* (license revoked for shooting that arose at bar). A long suspension may be

imposed for severe disorderly conduct. E.g. *Gabby's* (30 day suspension for severe disorderly conduct but not so severe as to merit revocation). In *JJAM Sports, Inc. d/b/a LaCabana Night Club Sports Bar and Grille, Inc. v. Lincoln Board of License Commissioners*, LCA-LI-99-05 (12/27/99), the Department uphold a two (2) day suspension for a fight inside the bar and a second fight outside in the parking lot with the patrons refusing to leave and police (including from the adjoining community) being called to clear the patrons and a police officer had a beer bottle thrown at him. More recently, *DL Enterprises d/b/a East Bay Tavern v. East Providence City Council*, DBR No. 14LQ009 (4/28/14), the Department reduced revocation to a 14 day suspension for fighting inside bar where there was allegations of stabbing but no positive identification of a weapon.

In this matter, by the time the Board voted to revoke the License, the Appellant had been closed for more than 30 days. The Department stayed the revocation by order dated December 16, 2014 but it was agreed at the Department hearing that the Appellant still has not re-opened.

In this matter, the physical fight was contained inside. While there were apparently some small injuries (cuts) to patrons, no weapons were used and there was no evidence that any of the patrons needed medical attention. The police were promptly called.<sup>6</sup> When the police responded, the Appellant's security was attempting to separate the fighting patrons and disperse the patrons.

The Appellant has stipulated to a series of smaller violations. Clearly the Appellant had been ignoring the prohibition of public smoking despite not being a smoking bar. The Appellant has now admitted as such. The Appellant agreed in May, 2014 not offer hookah. In

---

<sup>6</sup> Ironically, the Board criticized the Appellant for not complying with *Gianco, Inc. d/b/a \$3 Bar v. City of Providence, Board of Licenses*, 14LQ043 (10/31/14) when it had not been issued at the time of the fight. However, an issue in that case was that licensee's failure to call the police (though a patron had). In this matter, the Appellant's staff flagged down a police officer to help quell a disturbance before it spilled outside.

June, 2014, it was ordered to cease and desist from offering hookah and was fined for hookah smoking in July, 2014. Such a violation of the smoking laws after it being a condition of renewal, being ordered to cease and desist, and fined would have warranted either administrative penalties or a short suspension of the Appellant's License.

The Appellant has now been closed for over three (3) months. In light of the Department cases regarding progressive discipline and sanctions, the Appellant has now been closed longer than the fight and various violations merit. The revocation is reduced to a 30 day suspension. Since the Appellant has been closed for so long, no administrative penalties will be imposed.

Upon reopening, the Appellant must comply with State law and not permit public smoking including hookah. It is not a smoking bar and has admitted as such. It must comply with local licensing requirements and not have unlicensed entertainment or unlicensed dancing.

## **VI. FINDINGS OF FACT**

1. On or about December 8, 2014, the Board notified the Appellant that its License had been revoked by Providence.
2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision to the Director of the Department.
3. By order dated December 16, 2014, the Department stayed the revocation. However, the Appellant has not re-opened.
4. Pursuant to R.I. Gen. Laws § 3-7-21(c), the parties agreed to base the appeal on the record before the Board.
5. The Appellant had been closed since October 27, 2014.



6. Oral closings were held on February 10, 2015.
7. The facts contained in Section IV and V are reincorporated by reference herein.

**VII. CONCLUSIONS OF LAW**

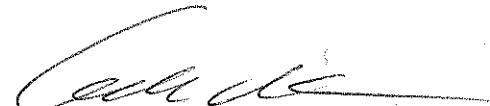
Based on the testimony and facts presented:

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. In this *de novo* hearing, there was no showing by the City to support the revocation of the License. Instead, the violations warrant a suspension of 30 days.

**VIII. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends that the decision of the Board revoking Appellant's Class BV License be overturned and be reduced to a 30 day suspension.

Dated: 2/25/15


  
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: 2/27/15

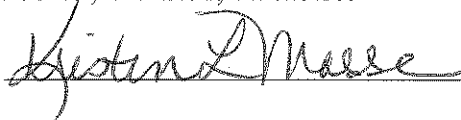
  
Macky McCleary  
Director

**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 27<sup>th</sup> day of February, 2015 that a copy of the within Decision was sent by first class mail, postage prepaid to Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, RI and Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903 and by hand delivery to Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Bldg. 68-69, Cranston, RI 02920.

  
\_\_\_\_\_