

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
PASTORE COMPLEX  
1511 PONTIAC AVENUE  
CRANSTON, RHODE ISLAND

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Luna Night Club, Inc.,  
Appellant,

v.

City of Providence, Board of Licenses,  
Appellee.

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DBR No.: 14LQ0045

DECISION

I. INTRODUCTION

On August 21, 2014, the City of Providence, Board of Licenses (“Board” or “City”) imposed administrative penalties of \$4,000 on the liquor license (“License”) of Luna Night Club Inc. (“Appellant”). Pursuant to R.I. Gen. Laws § 3-5-21,<sup>1</sup> the Appellant appealed this decision by the Board to the Director of the Department of Business Regulation (“Department”). The parties agreed to base the appeal on the record before the Board with the parties submitting written briefs by February 13, 2015.<sup>2</sup>

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 3-5-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

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<sup>1</sup> See case law discussion below.

<sup>2</sup> The undersigned was delegated to hear this appeal by order of the Director of the Department.

### **III. ISSUE**

Whether to uphold or overturn the Board's decision to impose the administrative penalty on the Appellant's License.

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

The City imposed a total of \$4,000 in administrative penalties on the Appellant with \$1,000 for a bottle service violation and \$3,000 for an overcapacity violation. The Appellant only appealed the administrative penalty of \$3,000 for overcapacity.

At the Board hearing, Detective John St. Lawrence ("St. Lawrence") testified on behalf of the Board. He testified that in the early morning of April 13, 2014, he and Sergeant [David] Tejada ("Tejada") received a call from the Sergeant-in-Charge to assess the Appellant's for overcapacity because of concerns there. He testified that they arrived about 1:15 a.m. and at closing time, he counted the patrons with a hand-held clicker exiting the front door and then he counted patrons still inside. He testified that he did not count employees or security. He testified he had a count of 431. He testified that Tejada counted the patrons exiting the side door and had a count of 25. He testified that the total count was 456 which he believed was 136 over capacity. On cross-examination, he testified that when he confirmed the capacity with the fire department, he found out that the capacity had been changed in January, 2014 from 320 to 416.

Tejada testified on behalf of the Board. He testified that he responded on April 13, 2014 with St. Lawrence to Appellant's. He testified that St. Lawrence was at the front door and he went to the side door and counted 25 patrons exiting with no one entering. On cross-examination, he testified that Sergeant Ryan watched the back door but he never asked him for a count of anyone exiting from the back door.

## 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. **Relevant Statutes**

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

Revocation or suspension of licenses – Fines for violating conditions of license. – (a) Every license is subject to revocation or suspension and a licensee is subject to fine by the board, body or official issuing the license, or by the department or by the division of taxation, on its own motion, for breach by the holder of the license of the conditions on which it was issued or for violation by the holder of the license of any rule or regulation applicable, or for breach of any provisions of this section.

### C. **Administrative Penalties**

Pursuant to R.I. Gen. Laws § 3-7-21, the Department does not have authority to hear appeals of fines. However, the Superior Court found that the Department has implied jurisdiction to review

administrative fines imposed by local boards pursuant to R.I. Gen. Laws § 3-5-21. See *The Rack, Inc. d/b/a Smoke v. Providence Board of Licenses*, 2013 WL 3865230 (R.I.Super.). The Court found that the Department did not have to apply a *de novo* standard of review<sup>3</sup> to appeals of administrative fines but that the Department must review the record and articulate and document a substantial, non-arbitrary rationale for invoking its discretion to dismiss appeals of fines imposed by local licensing boards and that the exercise of such discretion must be reasonable. The Court further found that if the monetary fine imposed on a licensee by a local liquor licensing board is within statewide limits set by statute then such a finding by the Department may be sufficient basis for the Department to dismiss a licensee's appeal. *Id.* at pp. 14-17.

#### **D. Arguments**

The Board argued that the evidence was that the Appellant was at overcapacity. It argued that overcapacity is a safety issue and even with the Appellant's capacity now at 416, the club was 40 over its capacity.

The Appellant argued that pursuant to R.I. Gen. Laws § 23-28.1-5(2)<sup>4</sup> and R.I. Gen. Laws § 23-28.2-4(4)<sup>5</sup> only the Fire Marshal, Deputy Fire Marshal, and Assistant Deputy Fire Marshal

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<sup>3</sup> See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984) (Department appeal hearing is a *de novo* hearing rather than an appellate review of what occurred at the municipal level).

<sup>4</sup> R.I. Gen. Laws § 23-28.1-5 provides in part as follows:

Definitions. – The terms used in NFPA 1 (Uniform Fire Code), in NFPA 101 (Life Safety Code) and in such other national codes as are authorized for adoption by the Fire Safety Code Board of Appeal and Review shall be given the definitions established in those codes unless another meaning is provided for in this title and is essential to implementing the purposes of this title, and the Fire Safety Code Board of Appeal and Review shall have authority to resolve any conflicts among definitions in order to achieve the purposes of this title and/or provide for the efficient administration of codes:

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(2) Authority having jurisdiction. Unless specifically defined to the contrary in this code, the authority having jurisdiction for the enforcement of this code shall be the state fire marshal, the deputy fire marshals, and assistant deputies.

<sup>5</sup> R.I. Gen. Laws § 23-28.2-4 states in part as follows:

Duties and responsibilities of state fire marshal. – The state fire marshal, as the authority having jurisdiction, shall have the authority to enforce and perform the duties required by the

can enforce the Fire Code. The Appellant argued that the Board can enforce and rule upon violations of the general laws but it cannot rule on general laws where the legislature has specifically given a specific entity enforcement power over a law. The Appellant argued that no one from the Fire Marshal's office or an agent testified as to overcapacity and noted that prior Department decisions on overcapacity included testimony from a fire investigator. E.g. *Club Heat d/b/a Level II v. City of Providence Board of Licenses*, DBR No. 12LQ064 (12/21/12).

### **E. Overcapacity**

The Department has previously held that "the capacity of a licensed establishment is a condition of licensing." *J.J.A.M. Sport, Inc. d/b/a La Cabana Night Club v. Town of Lincoln Board of License Commissioners*, DBR No. 08-L-0182 (11/26/08) at 10. R.I. Gen. Laws § 23-28.6-5(a)<sup>6</sup> imposes a duty on management to comply with occupancy limits by requiring that the management of any place of assembly shall not allow admissions in excess of the maximum occupancy.

Under the Appellant's argument, if the police responded to a liquor licensee's establishment and asked the licensee for its capacity count and the licensee's staff's count showed the establishment was at overcapacity, the Board could not proceed under the liquor licensing statutes

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Comprehensive Fire Safety Act, chapter 28.01 of this title, by the Fire Safety Code, chapters 28.1 – 28.39 of this title, and all codes referenced therein are adopted thereunder, and all other provisions of the general laws and public laws insofar as such powers and duties relate to fires, fire prevention, fire protection, fire inspection, and fire investigation. It shall also be the duty of the state fire marshal to enforce all laws of this state in regard to:

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(4) It shall the duty of the fire marshal to plan for and oversee the comprehensive, professional, and consistent enforcement of the fire safety code.

<sup>6</sup> R.I. Gen. Laws § 23-28.6-5 provides in part as follows:

Admissions restricted and supervised. – (a) Admissions to all places of assembly shall be supervised by the responsible management or by the person or persons delegated with the responsibility by the management, and the responsible person shall not allow admissions in excess of the maximum occupancy as provided in § 23-28.6-3 [repealed], provided, subsections (c), (d), and (e) below do not apply to churches and places of worship, wherein patrons retain their outer clothing for immediate exit, and where they are confined for a period not exceeding two (2) hours duration. Only those portions of a building used exclusively for religious worship are included in this exception.

because a fire department member had not made a count. *J.J.A.M Sport Inc.* relied on counts from two (2) police officers to find there was overcapacity (which was not disputed by that licensee).

The Board is not imposing penalties under R.I. Gen. Laws § 23-28.1-1 *et seq.* Instead, pursuant to the liquor licensing statutes, the Board can impose sanctions for violations of conditions of licensing. A condition of licensing is that an establishment stays within capacity. In this matter, the evidence was that two (2) police officers counted out the patrons as they exited and those that remained inside and found the Appellant to be overcapacity. The Appellant did not challenge the evidence of overcapacity but rather the Board's authority to enforce capacity violations without testimony from the Fire Marshal or an agent. While capacity is set by the Fire Marshal (etc.), the Board has the authority to find under the testimony presented at hearing that the Appellant violated a condition of licensing by being at overcapacity. See *Club Heat* and *J.J.A.M Sport Inc.*

**F. What is the Appropriate Sanction**

R.I. Gen. Laws § 3-5-21(b) provides that a first offense by a liquor licensee shall be fined \$500 with the fine for each subsequent offense not to exceed \$1,000. R.I. Gen. Laws § 3-5-21 establishes minimum fines for violations. Thus, the first offense is for any offense of the liquor licensing law and the subsequent offense is for any subsequent offense of the liquor licensing laws rather than pinpointing whether the violation is the first or subsequent offense of a specific statutory or regulatory violation. This interpretation is supported by the fact that the statute provides for a clean slate for all offenses if the licensee has not had any offenses for three (3) years. In other words, the first offense of the liquor statute cannot be fined more than \$500 with each subsequent offense of the liquor licensing law not being fined more than \$1,000 but if the licensee has no offenses for three (3) years, the clock is re-set and any violation would be considered a first offense.

The Appellant had administrative penalties imposed within three (3) years prior to April 13, 2014. See licensing history (certified record). On August 21, 2014, the Board imposed a penalty of \$3,000 for the Appellant being at overcapacity on April 13, 2014. According to its decision, the Board found that the Appellant was in violation of R.I. Gen. Laws § 3-5-21 because it was in violation of R.I. Gen. Laws § 23-28.6-5. Based on the forgoing, the Appellant violated a condition of licensing by being overcapacity so it violated R.I. Gen. Laws § 3-5-21. Thus, the Board imposed a \$3,000 penalty for one (1) violation of R.I. Gen. Laws § 3-5-21.

The Department reviews an administrative penalty in order to determine whether a monetary fine imposed on a licensee by a local liquor licensing board is within statewide limits set by statute. If the penalty is within such limits, the Department may dismiss a licensee's appeal. In this matter, there was one (1) violation of R.I. Gen. Laws § 3-5-21 so that the penalty should be reduced from \$3,000 to \$1,000 since the statewide limit for each violation is \$1,000.

## **VI. FINDINGS OF FACT**

1. On August 21, 2014, the Board notified the Appellant that its License had an administrative penalty of \$4,000 imposed with a \$3,000 penalty for overcapacity and a \$1,000 penalty for bottle service.
2. Pursuant to Rhode Island General Laws § 3-5-21, the Appellant appealed that decision by the Board to the Director of the Department. The Appellant did not appeal the bottle service penalty but rather appealed the overcapacity penalty.
3. The Appellant was at overcapacity on April 13, 2014.
4. The parties timely submitted closing briefs by February 13, 2015 to the undersigned sitting as a designee of the Director.
5. The facts contained in Sections IV and V, are reincorporated by reference herein.

**VII. CONCLUSIONS OF LAW**

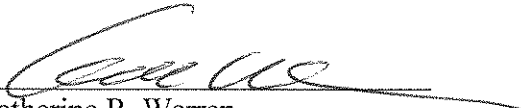
Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 3-5-1 *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 April 13, 2014.

**VIII. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends that the penalty be reduced from \$3,000 to \$1,000 since pursuant to R.I. Gen. Laws § 3-5-21, the statewide limit for each violation is \$1,000.

Dated: March 4, 2015

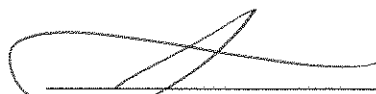
  
Catherine R. Warren  
Hearing Officer

**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: 3/5/15

  
Macky McCleary  
Director

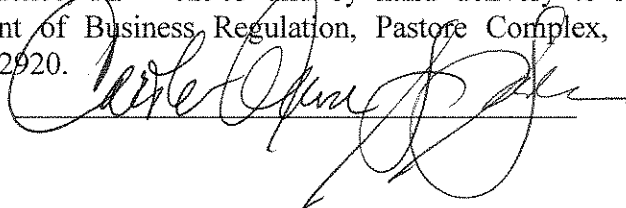


NOTICE OF APPELLATE RIGHTS

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 5<sup>th</sup> day of March, 2015 that a copy of the within Decision was sent by first class mail, postage prepaid to Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, RI 02904 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.



A handwritten signature in black ink, appearing to read "Peter Petrarca", is written over a horizontal line.