

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

The Rack, Inc. d/b/a Smoke,	:	
Appellant,	:	
	:	
v.	:	DBR No.: 14LQ0057
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	

DECISION

I. INTRODUCTION

On November 5, 2014, the City of Providence, Board of Licenses (“Board” or “City”) imposed administrative penalties of \$4,000 on the liquor license (“License”) of The Rack, Inc. d/b/a Smoke (“Appellant”). Pursuant to R.I. Gen. Laws § 3-5-21,¹ the Appellant appealed this decision by the Board to the Director of the Department of Business Regulation (“Department”). By order dated November 13, 2014, the Department denied the Appellant’s request to stay the administrative penalties. The parties agreed to base the appeal on the record before the Board. Oral argument was held on December 5, 2014 before the undersigned² with the parties resting on the record.³

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.*

¹ See case law discussion below.

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

³ The transcript was received on December 10, 2014 with the record closing on December 12, 2014.

III. ISSUE

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

IV. MATERIAL FACTS AND TESTIMONY

At the Board hearing, Sergeant Ernest Forlini, Jr., ("Forlini") Providence Police Department, testified on behalf of the Board. He testified that he was on duty in early hours of June 29, 2014 and was stationed outside of the Appellant's. He testified that the patrons exiting the Appellant's were pushing, shoving, arguing, and moving up the street. He testified that there were about 25 to 30 patrons with altercations between people and it took about fifteen (15) minutes to clear the area. He testified he called for assistance. On questioning from the Board, he testified there were no physical fights but more pushing and shoving and blocking traffic.

Forlini further testified that on July 19, 2014, he was positioned near the Appellant's at 1:45 a.m. when he saw patrons exiting the Appellant's that were pushing and shoving. He testified that there were disturbances on the same side of the street as Smoke and across the street near Caserta restaurant. He testified that there were about 100 patrons on the street congregating in various groups of different sizes. He testified that it took about 30 minutes to clear the situation as he and another officer went group to group. He testified that there are other establishments nearby on Atwells Avenue but the Appellant exits onto Spruce Street where the disturbances were and he saw the disturbances as patrons exited from Smoke.

At the Board hearing, Sergeant Michael Fallon, Providence Police Department, testified that he was with Forlini on July 19, 2014 at Smoke and patrons came out of Smoke fighting and arguing but not necessarily punching each other. He testified there were about 100 people in various groups arguing, pushing, shoving, and maybe a few punches. On cross examination, he

testified he could see people pushing and shoving and some punches thrown but it was mostly pushing and shoving. He testified he would call it a large disturbance.

At the Board hearing, Wayne Fantasia, head of security for Smoke, testified on Smoke's behalf. He testified on June 29, 2014, there was a disturbance in the street when patrons exited that was caused by patrons that Smoke had removed earlier in the evening. On cross-examination, he testified that on June 19, 2014, there was disturbance that started in the parking lot which is used not only by Smoke but by other clubs in the area. He testified that there was no one fighting as they exited from Smoke on the evening of June 19, 2014.

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 § 3-5-23 states in part as follows:

(b) If any licensed person permits the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood . . . he or she may be summoned before the board, body, or official which issued his or her license and before the department, when he or she and the witnesses for and against him or her may be heard. If it appears to the satisfaction of the board, body, or official hearing the charges that the licensee has violated any of the provisions of this title or has permitted any of the things listed in this section, then the board, body, or official may suspend or revoke the license or enter another order.

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 § 3-5-21.⁴ 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 review⁵ 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

⁴ R.I. Gen. Laws § 3-5-21 provides 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.

(b) Any fine imposed pursuant to this section shall not exceed five hundred dollars (\$500) for the first offense and shall not exceed one thousand dollars (\$1,000) for each subsequent offense. For the purposes of this section, any offense committed by a licensee three (3) years after a previous offense shall be considered a first offense.

⁵ 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).

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

Smoke argued that there was evidence of some disturbances and since liquor licensees are responsible for disturbances, Smoke is responsible but an administrative penalty between \$500 to \$1,000 is more appropriate than a \$4,000 penalty.

The Board argued that despite conflicting testimony, there were clearly disturbances on two (2) evenings that required the police to clear the area and based the Appellant's licensing history, the administrative penalties are warranted.

E. 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 June 19, 2014. On November 5, 2014, the Board dismissed all counts against Smoke except for the two (2) disturbances and voted to impose a penalty of \$4,000 for the disturbances. The Board discussed

how there were two (2) disturbances, one on each night. The Board referenced that there were other violations that could be tacked on but did not include (or explain) them. Thus, the Board imposed a \$4,000 penalty for two (2) violations of R.I. Gen. Laws § 3-5-23.

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 were two (2) violations (the two (2) disturbances) of R.I. Gen. Laws § 3-5-23 so that the penalty should be reduced from \$4,000 to \$2,000 since the statewide limit for each violation is \$1,000.

VI. FINDINGS OF FACT

1. On November 5, 2014, the Board notified the Appellant that its License had an administrative penalty of \$4,000 imposed.

2. Pursuant to Rhode Island General Laws § 3-5-21, the Appellant appealed that decision by the Board to the Director of the Department.

3. By order dated November 13, 2014, the Department denied to stay the imposition of said penalties.

4. There were two (2) disturbances at the Appellant's, one on June 19 and one on July 19, 2014.

5. Oral argument was held on December 5, 2014, before the undersigned sitting as a designee of the Director.

6. The facts contained in Sections IV and V, are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

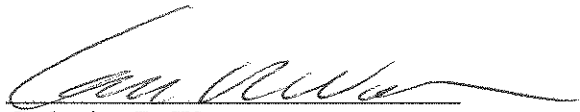
Based on the testimony and facts presented:

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 § 3-5-23 on June 19 and July 19, 2014.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the penalty be reduced from \$4,000 to \$2,000 since pursuant to R.I. Gen. Laws § 3-5-21, the statewide limit for each violation is \$1,000

Dated: 12/22/14

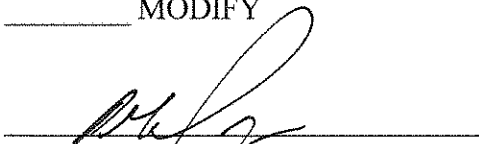

Catherine R. Warren
Hearing Officer

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: 23 Dec 2014


Paul McGreevy
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 13th day of December, 2014 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 Sergio Spaziano, 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.

