

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

Salacruz LLC d/b/a Sky Lounge,
Appellant,

v.

City of Providence, Board of Licenses,
Appellee.

DBR No.: 14LQ046

**RECOMMENDATION AND INTERIM ORDER DENYING MOTION
FOR STAY AND NOTICE OF *DE NOVO* HEARING**

I. INTRODUCTION

Salacruz LLC d/b/a Sky Lounge (“Appellant”) seeks a stay of the City of Providence, Board of Licenses’ (“Board”) August 20, 2014 decision to revoke its liquor license (“License”). The Board objected to the Appellant’s motion. This matter came before the undersigned on September 2, 2014 in her capacity as Hearing Officer delegated by the Director of the Department of Business Regulation (“Department”). The facts stated herein are based on the representations made by counsel for the Appellant and the Board. The parties dispute the facts surrounding the incident that led to a finding by the Board of disorderly conduct and an allegation of the assignation of the License.

There was a shooting in the Appellant’s parking lot. There were three (3) suspects other than the shooter that were arrested that the parties agreed had not been admitted into Appellant’s. The Appellant argued that there was no evidence of an alteration in the premises and disputed that the shooter and victim were in the club prior to the shooting. The Appellant represented the manager who closed the bar and three (3) security personnel had left at the time of the shooting

but there was another security staff member there in the parking lot. The Board argued that the testimony was that the shooter and the victim were in the club and that the altercation began outside the club and escalated toward the parking lot and with the manager and security leaving, the Appellant did not manage the situation.

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 § 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. STATUTORY BASIS FOR REVOCATION

R.I. Gen. Laws § 5-23-5 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.

R.I. Gen. Laws § 3-5-29 states as follows:

Prohibition against assignment or leasing of license. – The holder of a license issued pursuant to this title shall not assign, rent, lease or let the license but may transfer his or her interest only as provided in § 3-5-19.

IV. DISCUSSION OF CASES ON REVOCATION

In revoking a liquor license based on disorderly conduct, 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 v. Smith*, 202 A.2d 292, 295-296 (R.I. 1964) 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 (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, 842-3 (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 v. Pastore*, 473 A.2d 269 (R.I. 1984); *Schillers*; and *Furtado v. Sarkas*, 118 R.I. 218 (1977).

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). See also *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. v. 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 infractions justified revocation).

Thus, the Department will uphold a revocation where an incident is so egregious as to justify revocation without progressive discipline. 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*.

V. STANDARD FOR ISSUANCE OF A STAY

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976), a stay will not be issued unless the party seeking the stay makes a “strong showing” that “(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest.” Despite the ruling in *Harsch*, the Supreme Court in *Department of Corrections v. Rhode Island State Labor Relations Board*, 658 A.2d 509 (R.I. 1995) found that *Harsch* was not necessarily applicable in all agency actions and the Court could maintain the *status quo* in its discretion when reviewing an administrative decision pursuant to R.I. Gen. Laws

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

VI. ARGUMENTS

The Board argued that a stay should not be granted because the Appellant does not meet the requirements for the issuance of a stay. The Board argued that there is no irreparable harm to the Appellant since economic loss is not irreparable harm since irreparable harm is a loss without legal remedy. The Board argued that the Appellant failed to maintain the premises and the license holder assigned the License which is prohibited by statute and regulation. The Board argued that this is the same license holder of the prior license, Dubai, that had issues in the same location. The Board argued that it has an interest in protecting the public safety.

The Appellant argued that there was no evidence of an altercation inside the bar. It argued that it would suffer harm by closing. The Appellant argued that the shooter has been apprehended by the police. The Appellant argued that there was no malicious intent by the Appellant. The Appellant disputed the assignment of the License.

VII. DISCUSSION

If the Board can prove its case, the matter could be similar to *Stagebands* or *Cardio* where revocation was warranted on the basis of an egregious event. On the other hand, if the Board is unable to make the direct or indirect link between conduct on-premises and the parking lot death, the matter could be similar to *El Tiburon Sports Bar, Inc. v. Providence Board of Licenses*, DBR No. 06-L-0087 (6/1/07) (no link between licensee and an assault down the street from licensee). Or after a full hearing, it could be determined that there was a link between the Appellant and the fight but that the fight was not egregious enough to warrant a revocation.

Along with the fight the Board is relying on allegations of the assignation of the License to support the revocation of License.

A. Substantial Likelihood of Success on the Merits

Applying the criteria from *Harsch*, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. In the present case, the parties dispute the facts surrounding the conduct on the night in question. The facts not in dispute are that there was a shooting in the Appellant's parking lot after the Appellant closed and the manager and three (3) security members had left prior to the shooting.¹

R.I. Gen. Laws § 3-7-7 states in part as follows:

(a) A retailer's Class B license is issued only to a licensed bona fide tavern keeper or victualer whose tavern or victualing house may be open for business and regularly patronized at least from nine o'clock (9:00) a.m. to seven o'clock (7:00) p.m. provided no beverage is sold or served after one o'clock (1:00) a.m., nor before six o'clock (6:00) a.m. Local licensing boards may fix an earlier closing time within their jurisdiction, at their discretion.

Rule 18 of CLR8 states in part as follows:

Hours of Business Retail

(a) All patrons shall leave the licensed premises not later than 1:20 a.m. where the licensee is permitted to remain open until 1:00 a.m. Last call shall be at 12:45 a.m. Where licensee is permitted by local ordinance or permit to remain open until 2:00 a.m. all patrons must leave the licensed establishment by 2:00 a.m. All employees shall leave the licensed premises within one-half hour after the required closing time; provided the owner or employees may enter or be in a licensed establishment at any time for a legitimate business purpose with approval from the local police department.

(d) No one, other than the owner, employees, or law enforcement personnel, shall be admitted to the premises after the required closing time or before legal opening time.

The License is a Class BX but on a Thursday night would have closed at 1:00 a.m. so that everyone would have had to have left by 1:20 a.m. The parties agreed that three (3) security staff

¹ The incident happened Thursday to Friday morning at approximately 1:20 a.m.

had left the parking lot at the time of the shooting and only one (1) security member was still there. The timing is curious is the patrons could still be accessing their cars at 1:20 a.m. when apparently most of the security had left.

B. Irreparable Harm to the Appellant; Substantial Harm to Other Interested Parties; Public Interest

The Board (an interested party) has an interest in ensuring that liquor licensees – where the public gather - are compliant with their statutory obligations. In addition, there is a strong public protection interest. Not only does the public have an interest in ensuring that public spaces are safe, granting a stay could raise an issue of public safety and public protection.

The parties dispute certain facts and how the events unfolded that night and whether the disorderly conduct relates to the Appellant. The parties dispute the allegation of assignation of the License.

Based on the representations before the undersigned, it cannot be concluded whether or not the Appellant has a strong likelihood of success on the merits. The issue before the undersigned is whether there was disorderly conduct and whether the License was assigned and if so, whether the Board's revocation is justified. This cannot be determined without a review of the record and/or further hearing.

VIII. CONCLUSION

There are serious safety concerns if the Board can prove its allegations. The Appellant disputes the Board allegations.

It cannot be determined without a full hearing what happened on August 1, 2014. For now, in terms of public safety concerns (shooting), the Department will maintain the *status quo* by recommending the denial of the stay request.

IX. RECOMMENDATION

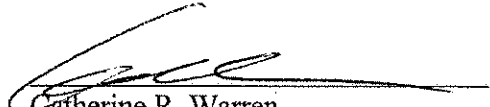
Based on the forgoing, the undersigned recommends that the Appellant's motion for a stay be denied.

Nothing in this order precludes the Appellant and the Board from agreeing to a stay (including with conditions).

Nothing in this order precludes the Appellant from petitioning the undersigned to revisit this order because of a change in circumstances.

A *de novo* hearing will be held on September 26, 2014 at 9:30 a.m. at the Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston.²

Dated: Sept 3, 2014

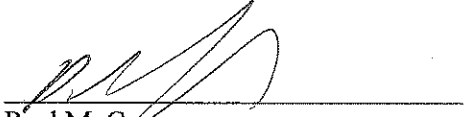

Catherine R. Warren
Hearing Officer

INTERIM ORDER

I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT
 REJECT
 MODIFY

Dated: Sept 3 2014


Paul McGreevy
Director

Entered this day as Administrative Order Number 14-52 on 3rd of September, 2014.

² It is the responsibility of the Appellant to provide a stenographer for this hearing and after the appeal hearing to provide a copy of the transcript to the undersigned pursuant to R.I. Gen. Laws § 3-7-21.

NOTICE OF APPELLATE RIGHTS

THIS ORDER IS REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35-15(a) WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF A PETITION DOES NOT STAY ENFORCEMENT OF THIS ORDER.

CERTIFICATION

I hereby certify on this 3rd day of September, 2014 that a copy of the within Order was sent by facsimile and first class mail, postage prepaid, to the following:

Sergio Spaziano, Esquire
Mario Martone, Esquire
City of Providence Law Department
444 Westminster Street, Suite 220
Providence, RI 02903

John S. Ciolli, Esquire
381 Atwells Avenue
Providence, RI 02909

and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920

