

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

**D&L Enterprises, Inc. d/b/a East Bay Tavern,
Appellant,**

v.

**East Providence City Council,
Appellee.**

DBR No.: 15LQ012
DBR No.: 15LQ014

DECISION

I. INTRODUCTION

On or about July 28, 2015, the East Providence City Council (“Board” or “City”) notified D&L Enterprises, Inc. d/b/a East Bay Tavern (“Appellant”) that its Class BV liquor license (“License”) had been revoked by the Board.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 August 7, 2015. On or about August 11, 2015, the Board notified the Appellant that its License had been revoked. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision to the Department. A conditional stay of this second revocation was issued by the Department on August 27, 2015. The undersigned was appointed hearing officer by the Director for both appeals. Pursuant to section of 23 of *Central Management Regulation 2 Rules of Procedure for Administrative Hearings*, these two (2) appeals are consolidated. Pursuant to R.I. Gen. Laws § 3-7-21(c), the parties agreed to base the appeal on the record before the Board. The parties timely submitted briefs by September 25, 2015. Both parties were represented by counsel.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to 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. ISSUES

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

IV. MATERIAL FACTS AND TESTIMONY

At the Board hearing, Chief Parella of the East Providence Police testified as to the incident of July 12, 2015.¹ He testified that the incident took place at the Appellant's parking lot and the police learned of the incidence when Miriam Hospital contacted the police about treating people injured in the parking lot. He testified that he reviewed the video of inside the bar prior to the parking lot incident and that there were "two (2) groups that were in the bar" and that there were "no issues inside the bar" and "that there were no indication that they were having any problems with each other" when inside the bar.² He testified that the two (2) groups left the bar and while they were in the parking lot they had a fight and a woman was punched unconscious and someone drove a car through the crowd injuring people at approximately 1:10 a.m. after the bar had closed but there were employees inside and about nine (9) or ten (10) people in the parking lot. He testified to other prior incidents that he felt were linked to the Appellant including at closing time on July 19, 2015, a man was passed out in a car and when he was woken up, he yelled at the police officer and was arrested for disorderly conduct. He testified that he believes the bar needs professional security inside and out.

¹ The Board hearing was on recorded on video online which the undersigned watched. See http://vid.opengovideo.com/playvideo.asp?sFileName=http://video.clerkshq.com/RI_EastProvidence_CityCouncil_2015_0811

² At approximately four (4) minutes and 20 seconds of the video.

The Appellant's video from July 12, 2015 for the parking lot was played for the Board. Detective Spermuli ("Spermuli") was called to indicate what was happening on the video taken of the parking lot at the time of the incident.³ The video showed that there were two (2) groups of people in or near cars: one to the left side of the video and other to right hand side. Spermuli indicated that based on the video and statements that he took during his investigation, there was no altercation to start with outside in the parking lot and that people were waiting to leave. He indicated that it appeared to be some kind of discussion between two (2) people – one in each group - and a woman said something along the lines of forget about them, let's go and someone in the other group took offense and a fight broke out. He indicated that some people tried to break up the fight, but a woman was punched to the ground.⁴ On the video, a car is seen accelerating through the crowd. Spermuli indicated that the car struck people. He indicated that the video started about 1:10 a.m. and ended at 1:14:38 a.m. He indicated that there were several injuries due to the car driving into people including a person's eye socket being fractured and another person having a nose fracture and displaced tooth. He indicated that the next day the Appellant's owner gave the police access to the security videos. He indicated that he watched the video of inside the bar taken at the same time as the parking lot incident (but not shown to the Board) and that there were two (2) bartenders cleaning up and neither reacted to anything happening in the parking lot and he would think they did not realize what was happening in the parking lot.⁵ He indicated that he also watched the video taken inside prior to the parking lot incident and there did not appear to be altercation inside the bar or prior to any one exiting into the parking lot.⁶

³ The Board did not swear in Detective Spermuli as the Board indicated he would just be commenting on the parking lot video, but he actually spoke of other topics.

⁴ This is explained at approximately 28 minutes through 31 minutes on the Board video.

⁵ At approximately 36 minutes on the Board video.

⁶ *Id.*

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 Appellant argued that the July License revocation for non-payment of a police detail bill was arbitrary and capricious since the Appellant had paid some of the bills and had agreed to pay in installments. The Appellant argued that the August 2015 revocation was excessive in terms of any violation and that the City inappropriately relied on un-adjudicated incidences from the police chief’s testimony. Finally, the Appellant represented that since the granting of the conditional stay it has hired its own professional security.

The City argued that the Appellant's License should be revoked for the fight in its parking lot. The City argued that based on the police chief's memorandum, there is ongoing criminality at the Appellant's premises and that revocation is appropriate in this situation.

C. 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 also *Tedford et al. v. Reynolds*, 141 A.2d 264 (R.I. 1958). *Baginski* held that since the Department⁷ 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).⁸ 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

⁷ At that time the alcoholic beverage commission.

⁸ See also *Jake and Ella's v. the Department of Business Regulation*, 2002 WL 977812 (R.I. Super. 2002).

the municipal level, any alleged error of law or fact committed by the municipal agency is of no consequence. *Id.* See also *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964) (Department's jurisdiction is *de novo* and the Department independently exercises the licensing function).

In this matter, the decision is being made on the record below. 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 or suspension 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 and the penalty.

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). See also *Stagebands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.). 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 impose discipline such as a revocation, cause must be found. R.I. Gen. Laws § 3-7-6 provides that applications for retail liquor licenses may be denied for cause. *Chernov Enterprises, Inc. v. Sarkas*, 109 R.I. 283 (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." *Id.* at 287 (italics in original).

The Court revisited the issue in *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269 (R.I. 1984). In discussing the cause standard of R.I. Gen. Laws § 3-7-6, the Court found,

In determining whether the statutory standard now under consideration is so vague as to offend due process, we are mindful of the principle that vague legislative standards may be saved if the needed specificity has been supplied by judicial interpretation. (citation omitted) The requisite judicial gloss was supplied in [*Chernov*] wherein the court emphasized that in authorizing revocation for cause, the Legislature never intended either to confer upon a licensing authority a limitless control or to countenance the of an unbridled discretion. The cause, the court noted, that would justify revocation had to be "legally sufficient"; that is, it must be bottomed upon substantial grounds and established by legally competent evidence. *Id.* at 274.

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). Thus, in order to sanction a liquor license, there must be substantial grounds established by the preponderance of legally competent evidence

D. Sanctions Prior to July 12, 2015

The Appellant has its License suspended in 2014 for 14 days for disorderly conduct. See *DL Enterprises d/b/a East Bay Tavern v. East Providence City Council*, DBR No. 14LQ009 (4/28/14). In that appeal to the Department, the Board also relied in its decision on a police chief's testimony regarding anecdotal incidents that happened at the Appellant's location; however, as indicated in that decision, no formal discipline had been rendered in those incidences and the "Appellant will not be held accountable for allegations in the past without formal action having been taken." *Id.*, p. 15, FN 8. On May 23, 2014, the Appellant's License was suspended for five (5) days and an administrative penalty of \$500 imposed for advertising drinks specials which is prohibited by R.I. Gen. Laws § 3-7-26. See *DL Enterprises d/b/a East Bay Tavern v. East Providence City Council*, DBR No. 14LQ009 (5/23/14).

E. The Alleged Violations

At the August Board hearing, the City Solicitor summarized for the Board the reasons to revoke the License. These reasons were as follows: 1) July 12, 2015; 2) several past incidents including the disorderly conduct suspension; 3) police officer assaulted on July 19, 2015 by a man parked in the Appellant's parking lot; and 4) the Appellant served liquor the weekend (August 1 and 2) following the revocation of July 28, 2015 and prior to a stay of the revocation being granted.

In terms of the allegation of assault on the police officer, no one testified except the police chief. The police chief did not enter into evidence a police report regarding the arrest of the man on July 19, 2015. In terms of the allegation of the unlicensed service of alcohol by the Appellant,

no one testified as to any unlicensed service of liquor. The owner was not called to testify. A police officer did not testify as to seeing it. A police report was not even entered into evidence. While administrative hearings may have relaxed rules of evidence, a finding cannot be made about the unlicensed serving of alcohol without any evidence. Nor can a finding be made regarding the arrest and the Appellant's responsibility without evidence regarding who was the man, why was he parked there, etc. Finally as discussed above, the recitation by the police chief of what he considered criminality at the Appellant's location have not been adjudicated in terms of the Appellant's liquor license and its responsibility except for those incidences discussed regarding the Appellant's prior discipline. Thus, the only alleged violation to consider for August 11, 2015 revocation is the July 12, 2015 parking lot incident.

i. **July 28, 2015 Revocation**

R.I. Gen. Laws § 3-5-21 provides as follows:

§ 3-5-21 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.

(c) In the event that a licensee is required to hire a police detail and the police refuse to place a detail at the location because a licensee has failed to pay outstanding police detail bills or to reach a payment plan agreement with the police department, the license board may prohibit the licensee from opening its place of business until such time as the police detail bills are paid or a payment plan agreement is reached.

The basis for the July revocation of License was the non-payment of the police detail bill of \$690 by the Appellant. The information received at the stay hearing for that revocation was that the Appellant had made partial payments in April, May, June, and July, 2015 for a total of

\$180. After the July 28, 2015 hearing, the police detail bill was paid in full by the Appellant. At the stay hearing, the Board agreed that the police detail has now been paid in full but disputed whether there had been a prior payment plan and pointed out that the Appellant had delayed payment of the bill which is from February, 2014. The Appellant did not start paying the bill more than one (1) year after it received the bill. Such a delay is unacceptable unless there is a documented payment plan. The Appellant argued at the stay hearing that there had been a *de facto* payment plan. Nonetheless, it took a show cause hearing to ensure the Appellant paid the entire bill eighteen (18) months after the issuance of the bill. There is no doubt that paying a police detail bill is a condition of licensing. Indeed, R.I. Gen. Laws § 3-5-21(c) provides that if a licensee is required to hire a police detail and has failed to pay outstanding police detail bills, the licensing board may prohibit the licensee from opening until the bill is paid or a payment plan reach. R.I. Gen. Laws § 3-5-21 provides for the imposition of administrative penalties for failing to comply with the conditions of licensing. The delayed payment of the police detail warrants the imposition of an administrative penalty of \$500 for a violation of conditions of licensing but does not rise to the level of revocation.

ii. **August 11, 2015 Revocation**

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.

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 (R.I. 1980). In a denial of renewal matter,⁹ *A.J.C. Enterprises v. Pastore*, 473 A.2d 269, 275 (R.I. 1984) found in discussing the disorderly provisions that “[T]here need not be a direct causational link between incidents occurring outside or nearby a drinking establishment and its patrons. Such a link is

⁹ In order to suspend or revoke a liquor license, there must be a showing that the holder has breached some applicable rule or regulation. In this matter, the City is relying on the disorderly provisions of R.I. Gen. Laws § 3-5-23. R.I. Gen. Laws § 3-7-6 requires that a denial of a renewal must be “for cause.” For cause has been interpreted to include (among other reasons) the violations of the disorderly provisions. *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61 (R.I. 1971).

established when it can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within.”

A liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali*. 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.

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 *Stage Bands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328508 (R.I. Super.) (disturbances and a shooting on one night justified revocation) and *Pakse Market Corp.* (upholding revocation of license when had four (4) incidents of underage sales within three (3) years). 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).

There is no dispute that the July 12, 2015 fight in the Appellant’s parking lot resulted in serious injuries and involved dangerous behavior. The City argued that based on that parking lot fight, the Appellant allowed its premises to become disorderly on the night of July 12, 2015. However, neither Chief Parella nor Detective Spermuli identified a disturbance inside the club. There was no testimony by patrons or police officers before the City or the Department regarding

any disturbance within the club. In fact, Parella and Spermuli testified that there was no disturbance seen on video in the club prior to closing. There is no dispute that the club closed at 1:00 a.m. The evidence was that the disturbance happened between 1:10 a.m. and 1:14 a.m. The video did not show a disturbance spilling out of the club into the parking lot. There was no evidence (whether eyewitness, on video, in a police report, etc.) entered at hearing that there was any disturbance whether oral or physical in the club that night. No disturbance was caught on video until 1:10 a.m. Indeed, the video showed the groups of people near the cars and the police testified/indicated at the hearing that there was no disturbance in the parking lot to begin with but rather people were waiting to leave and then there was a discussion between two people before the fight occurred.

Under *Cesaroni* and *A.J.C. Enterprises*, the Appellant is directly or indirectly responsible for the actions of its patrons and for the actions arising inside or emanating from inside the bar. There was no evidence of any disturbance starting inside the bar and spilling outside where it culminated in the fight. See *Stage Bands* and *Cardio*.

It is not enough that the people who fought in the parking lot were the Appellant's patrons to make the Appellant responsible for their actions. There is a very strict requirement that makes a licensee responsible for actions inside the bar and those outside activities that arise from inside the bar even if the licensee did not know of the actions or tried to supervise its patrons and prevent the activities. However, in order for the Appellant to be responsible there must be some kind of activity for which the bar is responsible for and from which it can be inferred the fighting arose. See *A.J. C. Enterprises* and *Cesaroni*. See also *Salacruz, LLC d/b/a Sky Lounge v. City of Providence Board of Licenses*, DBR No. 14LQ046 (11/25/15).

There was no evidence – either on the video or from the police or patrons - that directly or indirectly linked the Appellant to the fight. Therefore, there can be no finding that the Appellant violated R.I. Gen. Laws § 3-5-23.

F. Conditions of Licensing

In reviewing the past decisions by the Department about the Appellant, the Department in its April 2014 decision partially remanded the matter to the City to hold a hearing on the imposition of any permanent public safety conditions on the License.¹⁰ Nothing was brought up in this appeal regarding any condition of licensing; though, the police chief testified that the Appellant needed professional security. Indeed, in its brief, the Appellant represented that it had hired professional security for Friday and Saturday nights. However, there was no arguments or evidence presented on the issue of whether the Appellant had violated any public safety conditions of licensing.

VI. FINDINGS OF FACT

1. On or about July 28, and August 11, 2015, the City notified the Appellant that its License had been revoked by the City.
2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed both decisions to the Director of the Department.
3. These two (2) appeals were consolidated.
4. By order dated August 7, 2015, the Department stayed the July revocation. By order dated August 27, 2015, the Department conditionally stayed the August revocation.
5. Pursuant to R.I. Gen. Laws § 3-7-21(c), the parties agreed to base the appeal on the record before the Board.
6. Briefs were timely filed by September 25, 2015.

¹⁰ Pursuant to *Thompson v. East Greenwich*, 512 A.2d 837 (R.I. 1986), a local authority may grant a liquor license upon conditions that promote the reasonable control of alcoholic beverages.

7. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

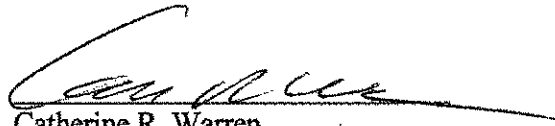
Based on the testimony and facts presented:

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. The Appellant violated R.I. Gen. Laws § 3-5-21 by late payment of the police detail bill.
3. The Appellant did not violate R.I. Gen. Laws § 3-5-23.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that both decisions of the City revoking Appellant's Class BV License be overturned, but that an administrative penalty of \$500 be imposed for the late payment of the detail. The payment of the penalty shall be due on the 31st day of the signing of this decision.

Dated: October 20, 2015

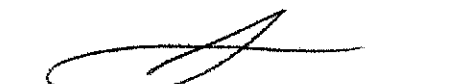

Catherine R. Warren
Hearing Officer

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: 10/23/15

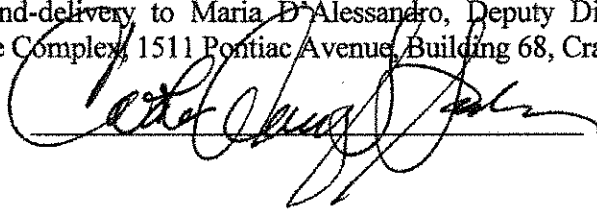

Macky McCleary
Director

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 26th day of October, 2015, that a copy of the within Order was sent by first class mail, postage prepaid to William Maaia, Esquire, and Lauren Vandervelde, Esquire, Law Offices of William C. Maaia & Associates, 349 Warren Avenue, East Providence, RI 02914 and to Robert E. Craven, Esquire, City of East Providence, Assistant Solicitor, 7405 Post Road, North Kingston, RI 02852 and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 68, Cranston, Rhode Island.



DIRECTOR'S MODIFICATION OF RECOMMENDED DECISION

The Director hereby modifies the recommended Decision as follows:

The last paragraph of Section V(E) (the first three lines at the top of page 14) is deleted and the following is inserted in its place:

In *Edge*, the Rhode Island Supreme Court upheld the Superior Court's judgment affirming the state liquor control administrator's decision, which had affirmed the board of licensing's decision not to renew petitioner's Class BV liquor license. The board had based its decision upon testimony regarding disorderly incidents that had occurred "just outside petitioner's establishments." *Edge*, at 1064. The Court found no error in the Superior Court's conclusion that there was legally competent evidence from which one could reasonably infer that the licensed establishments "were the catalysts that brought about the disruptive incidents in the neighborhood". *Id.*, at 1066. Similarly, in *A.J.C.*, the testimony presented was with respect to disruptive events that had occurred outside the petitioner's premises, i.e. "problems with excessive noise, parking congestion, public urination, unruly customers, and litter". *A.J.C.*, at 272. The Court concluded that it was "reasonable to infer from the evidence that the undesirable activities that occurred outside and around [the licensed premises] had their origin within." *A.J.C.*, at 275. The Court emphasized that "[o]nce a licensee [] receives a liquor license, it assumes an obligation to supervise the conduct of its clientele so as to preclude the creation of conditions within the surrounding neighborhood which would amount to a nuisance to those who reside in the area." *Id.*

At the Board hearing, there was testimony and video evidence presented that on the night in question, two groups left the Appellant's bar and moved into the parking lot. During the 10 to 14 minutes following their departure, a fight broke out between members of each group followed by a woman being punched to the ground, a car accelerating into the crowd striking people, with

personal injuries resulting from these disorderly incidents. Consistent with *Edge* and *A.J.C.*, from this evidence, the Board could reasonably infer that these disorderly incidents emanated from the Appellant's premises and that a violation of R.I. Gen. Laws Section 3-5-23 had occurred.

However, the City did not present sufficient evidence to support its decision to revoke the license. In reviewing a revocation, the Department considers progressive discipline and proportionality of sanctions. *Secreto, LLC v. City of Providence, Board of Licenses, DBR No. 15LQ010 (8/11/15)*. The evidence at the hearing was limited to the incidents of July 12, 2015. Had the City presented evidence regarding the alleged assault and arrest of a man on July 19, 2015 and the allegations of unlicensed service of alcohol by the Appellant on the weekend following the July 28, 2015 license revocation but prior to a stay of the revocation being granted, there may have been sufficient basis to uphold the Board's August 11, 2015 revocation. However, the City failed to present testimony and other evidence with respect to these allegations.

Paragraph 3 of Section VII (on page 15) is deleted and the following is inserted in place thereof:

3. There was legally sufficient evidence from which to reasonably infer that the Appellant violated R.I. Gen. Laws Section 3-5-23.

Section VIII is deleted and the following inserted in place thereof:

Based upon the above analysis, the July 28, 2015 decision of the Board revoking the Appellant's class BV liquor license is overturned, but an administrative penalty of \$500 shall be imposed for the late payment of the detail. The payment of the penalty shall be due on the 31st day of the signing of this decision. The August 11, 2015 revocation is also overturned. A fourteen (14) day suspension of the license is imposed for the violation of R.I. Gen. Laws Section 3-5-23, such suspension to commence ten (10) days from the date of this decision.