

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

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<b>Truth VIP Lounge, LLC d/b/a Revel Lounge, Appellant,</b>	:	
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	:	<b>DBR No. 21LQ009</b>
<b>v.</b>	:	
	:	
<b>City of Providence, Board of Licenses, Appellee.</b>	:	
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**ORDER RE: MOTION FOR STAY**

**I. INTRODUCTION**

This matter arose from a motion for stay filed on December 13, 2021 by Truth VIP Lounge, LLC d/b/a Revel Lounge (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on December 9, 2021 by the City of Providence, Board of Licenses (“Board”) to revoke the Appellant’s Class BV and BVX liquor license (“License”).<sup>1</sup> A hearing<sup>2</sup> on the motion to stay was heard on December 16, 2021 before the undersigned who was delegated to hear this matter by the director of the Department.

**II. JURISDICTION**

The Department has jurisdiction over this matter pursuant to 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.*

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<sup>1</sup> At the Board hearing, the Board also revoked the Appellant’s other City licenses, but the Department does not have jurisdiction over those licenses. Appeals to the Department can only relate to the liquor license held by the Appellant. See *El Nido v. Goldstein*, 626 A.2d 239 (R.I. 1993) (virtualing license is a separate and distinct license from a liquor license).

<sup>2</sup> The hearing was held remotely.

A liquor appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21 is considered a *de novo* hearing. The Department's jurisdiction is *de novo* and the Department independently exercises the licensing function. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964); and *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Because the Department's has such broad and comprehensive control over traffic in intoxicating liquor, its power has been referred to as a "super-licensing board." *Baginski v. Alcoholic Beverage Comm.*, 4 A.2d 265, 267 (R.I. 1939). See also *Board of Police Com'rs v. Reynolds*, 133 A.2d 737 (R.I. 1957). The purpose of this authority is to ensure the uniform and consistent regulation of liquor statewide. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964).

### **III. THE BASIS FOR 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, or permits any gambling or unlawful gaming to be carried on in the neighborhood, or permits any of the laws of this state to be violated in the neighborhood, in addition to any punishment or penalties that may be prescribed by statute for that offense, 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 § 3-5-21 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.

In revoking or suspending a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. See *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964). The same statute also forbids a licensee from permitting any laws of Rhode Island from being violated. 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). 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 a liquor licensee.

Thus, 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 a 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).

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 v. Department of Business Regulation*, 2002 WL 977812 (R.I. Super.) (R.I. Super.) (overturning a revocation of a liquor license as arbitrary and capricious).

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* (upholding revocation when had four (4) incidents of underage sales within three (3) years). See also *ABK, LLC d/b/a Boneyard BBQ and Saloon v. Town of Hopkinton Town Council sitting as the Board of Licenses*, DBR No. 19LQ031 (1/14/20) (disorderly conduct and other violations on one night with one prior 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 with licensee failing to call the police 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.*

#### **IV. STANDARD FOR ISSUANCE OF A STAY**

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (R.I. 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.

#### **V. PRIOR DISCIPLINE**

The Appellant represented that it has been in business for approximately 2 1/2 years and has had two (2) prior administrative penalties. The Board did not dispute this representation.

#### **VI. THE BOARD HEARING**

The information received by the undersigned is based on representations of the parties. The undersigned did not have a transcript of the Board hearings; however, audios of the Board’s hearings for December 1 and 2, 2021 were available online and the undersigned listened to them.<sup>3</sup>

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<sup>3</sup> <https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=12797&Format=Minutes>.  
<https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=13264&Format=Minutes>.  
The board voted at its December 9, 2021 meeting to revoke the License. See  
<https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=13265&Format=Minutes>.

At the stay hearing, the parties did not dispute that there was a fight inside the Appellant on October 17, 201 and as a result two (2) patrons were shot inside the Appellant's. Another patron who was shot was found outside but it was inferred and not disputed that patron was also shot inside. No evidence about ballistics or the gun used was entered at the Board hearing, but the parties indicated it is believed that the same person shot the three (3) patrons. While there was some indication at the Board hearing about a shooter outside, the parties indicated at the stay hearing that a person could not stand outside the side door and shoot inside and hit people on the dance floor (where fight broke out). The parties did not dispute that the gun was shot inside the Appellant. The parties represented there was no evidence whether a security guard was covering the side door that night as required by the security plan. The Appellant also represented that its usual video system was not in use as that had been turned over the Providence Police Department due to an incident in August, 2021 so there were only ring cameras in operation that filmed when triggered. The parties represented that the video did not show the shooting, but the video showed the fight starting inside.

## **VII. ARGUMENTS**

The Appellant admitted that there were clearly severe violations on October 17, 2021 and the issue is what is the appropriate sanction. The Appellant argued that it has been licensed for 2 1/2 years and this is its first disorderly violation, and it only has had two (2) other minor sanctions. The Appellant argued that this matter is similar to *J. Acqua, Inc. d/b/a Acqua Lounge v. City of Providence, Board of Licenses*, 16LQ014 (11/29/16). In *Acqua*, the bouncer apparently did not pat down a patron because he knew the patron and that patron brought in a gun. There was a fight and the owner intervened in the fight, and the gun went off into the ceiling. In *Acqua*, the class BVX license was revoked, and the class BV license was suspended for 60 days. That establishment did not have a N

license and had not been required to have a security plan. As part of that decision, the establishment instituted wandering or metal detectors at the entrance, filed a security plan with the Board, and had a police detail assigned.

The Appellant argued that the establishment in *Acqua* had prior disorderly conduct violations before the shooting incident and its BV license was only suspended. The Appellant argued that its violations were less severe than *Acqua* in that there was not the same dereliction of duty of a bouncer letting his friend in without a pat down. The Appellant argued that the Board just automatically revoked its License for an inside shooting.

The Appellant represented that it had been unhappy with its current security company prior to this incident and had been planning on going in house for security. The Appellant represented that the security company was not sending as many staff at night as it was supposed to. The Appellant represented that its owner is very hands-on and is there every night. The Appellant represented that it thinks the gun got through the side door where there is supposed to be a security guard.

The Appellant represented it had not requested a hearing right away as it knew this serious violation would merit a 45 day suspension. It argued that without a stay, it will not be able to have a meaningful hearing. It argued that it will suffer irreparable harm if it remains closed as it has been closed since the incident on October 17, 2021 and will lose staff and good will. The Appellant argued it has no prior violence and will get better security, and these violations do not merit a revocation.

The Board argued that while the Appellant made representations at the stay hearing, there was no evidence entered at the Board hearing to support any of those representations as no one testified for the Appellant. The Board argued that the Appellant chose to hire a woefully insufficient security company that it had been informed were not good. The Board argued that the Appellant had been told the manager was not competent and had past issues. The Board argued that the Appellant does

not have a long licensing history without issues because its 2 1/2 years of licensing includes Covid19 shutdowns. It argued that while there is a metal detector at the door, there was no evidence that it was used that night. The Board argued that it will not always revoke for an inside shooting and referred to the Art Bar.<sup>4</sup> The Board argued that this is a public safety issue as three (3) people were shot inside and is not an issue where a fight spills outside and someone goes and gets a gun and it is not an accident. The Board argued that there are different doors at the Appellant that were not being covered and the owner demonstrated bad judgment in terms of his security and manager. The Board argued that it has a substantial likelihood of success on the merits as the Appellant presented no evidence and the *status quo* of the revocation should be maintained.

The City agreed with the Board's argument. The City argued it is not relevant whether the gun got in via the main entrance (where metal detector is located) or the side door. The City argued that a gun got inside the club and three (3) people were shot, and the Appellant knew it had poor security, a poor manager, and a bad environment so a stay should not issue. The City argued the Appellant was not following its security plan, so it does not matter if it comes up with a new one since it has not followed its current plan. The City argued the Appellant should have known it did not have enough security officers. The City argued that it does not constitute irreparable harm for the Appellant to be closed for a while. The City argued that *Acqua* was a small venue, and this venue is much larger with a capacity of 300 to 400.

In reply, the Appellant argued it did not present any evidence before the Board because it knew it cannot get a fair hearing there as the Board does not follow the rules of evidence and does not follow the rules of progressive discipline.

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<sup>4</sup>171 *Chestnut Street LLC d/b/a Art Bar v. City of Providence, Board of Licenses*, DBR No.: 18LQ025 [https://dbr.ri.gov/documents/decisions/CL\\_OrderMotionForStay-ArtBar.pdf](https://dbr.ri.gov/documents/decisions/CL_OrderMotionForStay-ArtBar.pdf) (11/20/18 stay order regarding 30 day suspension for a gun being fired at ceiling for licensee in business for 12 years without prior discipline); [https://dbr.ri.gov/documents/decisions/CL\\_OrderOfDismissal-ArtBar.pdf](https://dbr.ri.gov/documents/decisions/CL_OrderOfDismissal-ArtBar.pdf) (1/11/19 dismissal after resolved).



## VIII. DISCUSSION

The issue in this matter is not a question of whether the Appellant is responsible for the disorderly conduct. Rather the Appellant acknowledged that there were severe disorderly conduct violations within the establishment for which it was responsible. The Department recently issued a conditional stay in *Fuego Lounge, LLC d/b/a Fuego Lounge v. City of Providence, Board of Licenses*, DBR No. 21LQ005 (9/14/21) which concerned shootings outside (no gun inside) of a licensee.<sup>5</sup> In that matter, at hearing, there will be an issue of security failures and the responsibility of the licensee for if there were any such failures, and if so, what would the sanction be. The Department recently issued a conditional stay in *Italo-American Citizens Club of Warren v. Town of Warren, Board of Licenses*, DBR No.: 21LQ006 (9/24/21).<sup>6</sup> That matter concerned a shooting (and murder) inside a *small* social club. Due to the nature of those events, it is unclear whether the shooter was a patron at the time of the shooting or not. The conditional stay limited the service of alcohol from noon to 8:00 p.m. and required the filing of a security plan (not required previously).

When considering the stay request in the local revocation in *Boneyard*, the Department determined the issue at hearing would be whether the matter was more like *Cardio Enterprises* (revocation for a solitary act) or *Davinci Lounge and Restaurant Inc. and Davinci Cigar Bar, Inc. City of Providence, Board of Licenses*, DBR No. 19LQ004 (4/3/19) (late night revoked; barring owner from working at licensee due to bad acts). As the complete nature of violations were unclear, a stay was issued on the revocation of *Boneyard's* Class BV license<sup>7</sup> with a variety of

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<sup>5</sup> [https://dbr.ri.gov/documents/decisions/CL\\_OrderofStay-FuegoLoungevCityofPvd.pdf](https://dbr.ri.gov/documents/decisions/CL_OrderofStay-FuegoLoungevCityofPvd.pdf).

<sup>6</sup> [https://dbr.ri.gov/documents/decisions/CL\\_MotionforStay-ItaloAmericanCitizensClubofWarren.pdf](https://dbr.ri.gov/documents/decisions/CL_MotionforStay-ItaloAmericanCitizensClubofWarren.pdf).

<sup>7</sup> [https://dbr.ri.gov/documents/decisions/CL\\_OrderMotionForStay-BoneyardBBQ.pdf](https://dbr.ri.gov/documents/decisions/CL_OrderMotionForStay-BoneyardBBQ.pdf) (10/19/19).

conditions including closing by 11:00 p.m. and hiring a new manager and filing security plan with local board.<sup>8</sup> (In *Boneyard*, the Class BV license was revoked after hearing).

The Appellant argued that the violations here merit less than *Acqua*, but the Appellant is a large venue (apparently two floors) that has operated for approximately 18 to 24 months (Covid shutdowns). It is not known whether the gun came in the main door or the side door but a patron brought one in. The Appellant acknowledged security failures that night. The Appellant represented that the owner was hands-on but there was no evidence presented at the Board hearing that the owner or manager were aware of the understaffing of security by the security company. There was no evidence that the owner or manager verified the security plan was being followed.

The Appellant represented that it would be amenable to the granting of a stay with a police detail with some flexibility as the Providence Police Department has had recent issues in filling police details. Recently a stay issued conditioned on a Providence Police detail was modified at the request of a Providence licensee (Board took no position on request) because of the unavailability of police details.<sup>9</sup> However, the Appellant's lawyer told the Board that it was unhappy with its security company and had been unhappy with it previous companies as well. The Appellant represented that was why it wanted to go in-house on security. However, such a plan now without any evidence of prior experience or knowledge of security by the Appellant raises concerns in terms of a re-opening especially as the Appellant already has had security lapses.

This matter involves disorderly conduct for which the Appellant will most likely lose its Class BVX license. And if does not lose its Class BV license, that license most likely will be subject to a long suspension. *Acqua*. Furthermore, along with the disorderly conduct, there were security failures

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<sup>8</sup> These conditions also included the co-owner not working or managing there, new manager to meet with local board to explain his experience and plans for operating, not to re-open without a working surveillance system, and provide the local board with a security plan prior to re-opening and present it to local board.

<sup>9</sup> *Fuego*, see CL\_SecondMotionforStay-FuegoLoungevCityofPvd.pdf (ri.gov) (9/24/21).

acknowledged by the Appellant. In *Ciello, LLC d/b/a Club Luv v. City of Providence, Board of Licenses*, DBR No. 17LQ008 (9/14/17), there were serious violations of R.I. Gen. Laws § 3-5-21 regarding security relating to the exiting of patrons. Those security violations – when there was no disorderly conduct violation that night and no other prior disorderly conduct (associated with that owner) – resulted in a 30 day suspension for the Class BV license and a 180 day suspension for Class BVX license (served concurrently).

Often the Department will issue a conditional stay in order to allow a licensee to remain open pending a full hearing so that the licensee will have a meaningful appeal. If there is a short suspension such a 10 day or even a 30 day suspension, a licensee would not have a meaningful appeal of that suspension without a stay prior to hearing. Often the stays are conditioned on police details and/or reduced hours and other conditions. *Supra*.

Sometimes a stay is issued because while it is clear there were violations, it is not clear what the sanction would be. *Boneyard*. In this situation, it is clear that the Appellant will be subject to severe if not revocation of license. Three (3) people were shot inside. The Appellant is responsible for that disorderly conduct. Further, the Appellant's security company was not staffing the Appellant as required by the security plan. It is not known whether it was manning the side door as it was supposed to. The Appellant's owner and manager were apparently unaware of the staffing issues.


The Appellant does not have a strong likelihood of success on the merits in terms of the revocation of its Class BVX license. While a stay could be granted with reduced hours of operations and a police detail, the undersigned does not believe that there are security conditions at this time that could be put on the Appellant's operations that would ensure safety of the public. While the Appellant represented it was not happy with its security company and was planning to go in-house, there was no evidence that it has such experience to have in-house security. The

Appellant would need to find an acceptable security company or somehow be able to show its in-house security is knowledgeable and can provide acceptable security. The Appellant would also need to find another manager that could oversee the security and be aware what was happening each night. Right now, there was no evidence that the Appellant can entrust a manager and security company for such duties.

**IX. RECOMMENDATION**

Based on the foregoing, the undersigned recommends that a stay be denied for revocation of the Class BV and Class BVX license.

Dated: December 21, 2021


  
Catherine R. Warren  
Hearing Officer

**INTERIM ORDER**

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

  X   ADOPT  
       REJECT  
       MODIFY

Dated: 12/21/2021

  
Elizabeth M. Tanner, Esquire  
Director

**A hearing will be scheduled on a mutually convenient date to be determined by the parties.<sup>10</sup>**

<sup>10</sup> Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant is responsible for the stenographer.

**NOTICE OF APPELLATE RIGHTS**

**THIS ORDER CONSTITUTES AN INTERLOCUTORY ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-15. 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 21st day of December, 2021 that a copy of the within Order and Notice of Appellate Rights were sent by email and first class mail, postage prepaid, to the following: Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903, Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, R.I. 02903, and Louis A. DeSimone, Jr., Esquire, 1554 Cranston Street, Cranston, R.I. 02920 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

*Diane L. Paravisini*  
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