

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

Ice Lounge, Inc. d/b/a Ice Lounge, Appellant,	:	
	:	
v.	:	DBR No.: 15LQ008
	:	
City of Providence, Board of Licenses, Appellee.	:	
	:	

RECOMMENDATION ON MOTION TO MODIFY STAY

I. INTRODUCTION

On May 28, 2015, the City of Providence, Board of Licenses (“Board”) took action¹ against Ice Lounge, Inc. d/b/a Ice Lounge (“Appellant” or “Ice”). The Appellant appealed this action to the Department of Business Regulation (“Department”) and on June 3, 2015 the Department issued a conditional and partial stay of the Board’s decision pending the appeal. One of the conditions of the Department’s stay was that the Appellant only play ambient music. The Board moved to modify the stay based on allegations that the Appellant’s music was too loud on the evening of June 4 to 5, 2015 and June 6 to 7, 2015. The Appellant objected. A hearing was held on this request on June 16, 2015.²

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.*

¹ The Board revoked the Appellant’s Class BX liquor 2:00 a.m. license, suspended its Class BV license for three (3) days, and imposed a \$1,500 administrative penalty and police detail for Friday and Saturday nights.

² The appeal hearing was also held that day but that decision will issue separately.

III. TESTIMONY

Joan Verardo (“Verardo”) testified on behalf of the Board. She testified she lives in the condominium building opposite the Appellant on the third floor and she faces the Appellant which is on the second floor.³ She testified that on June 4, 2015, the music from the Appellant’s woke her up at 11:00 p.m. and she got out of bed and at about 12:15 a.m., she called the police and the music stopped at 12:50 a.m., but the police never came. She testified that the music caused vibration in her building. On cross-examination, she testified that she has owned the condominium since the building opened five (5) years ago. She testified that when she bought the condominium, Atwells Avenue was a business district. She testified that she could feel the vibrations from music but also can also hear cars and motorcycles and people talking outside.

Robert Terino (“Terino”) testified on behalf of the Board. He testified that he also lives in the building opposite the Appellant and on June 6 to 7, 2015 at about midnight, he parked his car in the parking lot next to his building. He testified that he could hear music outside. On cross-examination, he testified that he went to two (2) other restaurants as well as the restaurant below the Appellant to see if they were the source of the music, but they were not and he identified the source of the music as being from the Appellant.

Marlaydis Torres (“Torres”) testified on behalf of the Appellant. She testified that she was at Ice on June 4, 2015 and arrived at about 10:30 p.m. and left about midnight. She testified that she parked two (2) streets over and did not hear music until she had opened the door to Ice. She testified that she met a friend and they were able to speak and converse while there and the music did not get louder. She testified that on Saturday, June 6, she also went to Ice, parked two (2) streets away, and did not hear the music until the Appellant’s door opened. She testified that while there she was able to speak with her friends and converse and did not hear any music

³ There is no dispute that the Appellant is on the second floor with a restaurant on the first floor.

outside. On cross-examination, she testified that at the downstairs door [into the first floor with Appellant being on the second floor], she heard muffled sounds of music but did not hear the music until opening the Appellant's door.

Richard Matos ("Matos"), one (1) of the Appellant's owner's, testified on behalf of the Appellant. He testified that he has been an owner for about one (1) year and two (2) months. He testified that on June 4, he arrived at the lounge at about 8:30 p.m. to ensure the bar was set up and security was in place. He testified that the busy time is on Thursday is between 11:00 and 11:30 p.m. and closing and Saturday is midnight to closing.⁴ He testified that every hour he goes outside to see if he can hear the music and he did this on Thursday night and could not hear the music at 11:00 p.m. or 12:00 p.m. He testified that on Saturday night he arrived between 8:30 and 9:00 p.m. and checked outside at 10:30 p.m., 11:30 p.m., 12:30 p.m. and 1:30 p.m. and could not hear the music from the street. He testified he has been trying to reduce the noise as he knows the consequences if he does not comply with the stay order as Ice had previously been closed. He testified that after these complaints, he has identified a speaker in the back of the location and turned that off. He testified that no one from the neighborhood has spoken to him about the noise and no one asked him either night to turn down the music. On cross-examination, he testified that he has been checking outside since the club reopened in January. He testified that the speaker in back was by a back door next to the alley so he felt there was a problem with that speaker. On questioning from the undersigned, he testified that the music comes from an Ipad hooked up to three (3) speakers.

IV. DISCUSSION

There was varying accounts about the events of June 4 to 5, 2015 and June 6 to 7, 2015. Terino testified that he identified the music as coming from the Appellant. Verardo testified it

⁴ The Appellant opens at 10:00 p.m.

was too. However, Torres testified no music could be heard from the street and she was able to speak to a friend while inside Ice. The owner testified he kept checking outside every hour each night and he could not hear the music when outside. Presumably, if the music was so loud it was vibrating the music across the street, one could not be speaking inside the lounge. However, after that weekend, Matos decided that the back speaker could be an issue and disconnected it. There were apparently no complaints regarding noise the following weekend.

Despite conflicting testimony, the basic issue is to ensure that the conditions of the stay are followed. A condition of the stay is to only play ambient music. Clearly, it is in the owner's interest to ensure that it maintains its obligations under the stay and there is now a police detail to ensure compliance.

V. **RECOMMENDATION**

Based on the forgoing, the undersigned recommends that the June 3, 2015 conditional and partial stay be modified to add the following:

1. The back speaker by the alley continues to be disconnected from the music source.
2. The Appellant's music does not go over 50 dB.⁵

⁵ The undersigned based this condition on Article III of Providence Ordinance Code Section 16-93 which states as follows:

Radios, television sets, and similar devices.

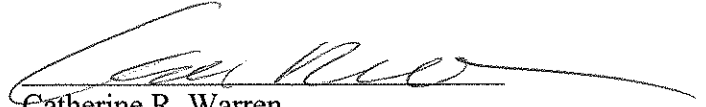
It shall be unlawful for any person within any residential zone of the city to use or operate any radio receiving set, musical instrument, phonograph, television set, or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of neighborhood residents or of any reasonable person of normal sensitivity residing in the area. The operation of any such set, instrument, phonograph, machine or device so as to exceed fifty (50) dBA between the hours of 8:00 p.m. and 7:00 a.m. or so as to exceed fifty-five (55) dBA between the hours of 7:00 a.m. and 8:00 p.m. measured at the property line of the building, structure or vehicle in which it is located, or at any hour when the same is audible to a person of reasonably sensitive hearing at a distance of two hundred (200) feet from its source, shall be prima facie evidence of a violation of this section.

While Atwells Avenue is a mixed area and not completely residential, this provides a baseline for ensuring the music stays ambient. See *La Base Sports Bar & Grill LLC v. City of Providence, Board of Licenses*, DBR No.: 10-L-0037 (4/5/11).

The Board and Appellant may agree to modify the conditions of the stay if they choose.

Nothing in this order precludes the undersigned to revisit this order because of a change in circumstances. E.g. the violation of any of the conditions could warrant a review of the stay order.

Dated: June 23, 2015

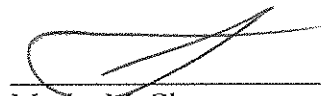

Catherine R. Warren
Hearing Officer

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: 6/24/15


Macky McCleary
Director

Entered this day as Administrative Order Number 15- 27 on 24th of June, 2015.

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 24th day of June, 2015 that a copy of the within Order was 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, RI 02903 and Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, RI 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