

III. ISSUES

Whether to uphold or overturn the Board's decision to deny the Appellant's renewal application for the License.

IV. MATERIAL FACTS AND TESTIMONY

Based on a review of the transcript of the Board's November 24, 2014 hearing, that hearing was a new hearing on the Appellant's renewal application as the Board had previously deadlocked two (2) votes to two (2) votes on whether to grant or deny the renewal. At the Board November 24, 2014 hearing, there was testimony by witnesses concerned with what they considered the deterioration of the quality of life on Federal Hill where the Appellant is located.

The City councilor, Brian Principe, for the Federal Hill area spoke against the renewal. He based his opposition on the Appellant's recent 60 day suspension, a melee in March, and administrative penalties levied on the Appellant which he felt spoke to a pattern of irresponsibility by the Appellant. Principe also brought up fighting at another liquor establishment owned by the same licenseholder as the Appellant's. He stated that his objections are based on incidents related directly to the Appellant.

Bob Duva, Federal Hill Commerce Association, spoke against the renewal and spoke of his Association's concern with street ambiance on Federal Hill and that late night activities on Federal Hill have caused business to decrease. Louise Ellis who owns a bakery on Federal Hill opposed the renewal application because of her concern about what is going on at Federal Hill. She said her customers and employees worry and are fearful about the Appellant and other establishments. A witness identified as Mario from the Bradford opposed the renewal as he believes the Appellant has impacted his business because people are afraid of Atwells Avenue.¹

¹ There was another witness at the Board but that witness spoke about another liquor licensee and not the Appellant's so is not relevant.

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. **The Appeal before the Department**

The hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); and *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964) (Department’s jurisdiction is *de novo* and the Department independently exercises the licensing function). Thus, while there was not a new hearing before the Department, the proceeding before the Department is considered a *de novo* hearing. 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 denial of renewal but whether the Board presented its case for denial before the undersigned. The undersigned will

make her findings on the basis of the evidence before her and determine whether that evidence justifies said denial.

C. Standard of Review

Pursuant to R.I. Gen. Laws § 3-7-6, the Appellant's Class B application for renewal of license may be denied "for cause." Said statute provides as follows:

Renewal of Class A, Class B, Class C, Class D, Class E, and Class J licenses. The holder of a Class A, Class B, Class C, Class D, Class E, or Class J license who applies before October 1 in any licensing period for a license of the same class for the next succeeding licensing period is prima facie entitled to renewal to the extent that the license is issuable under § 3-5-16. This application may be rejected for cause, subject to appeal as provided in § 3-7-21.

In *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61, 63 (R.I. 1971), the Rhode Island Supreme Court rejected the argument that a license renewal may only be based on breaches of R.I. Gen. Laws § 3-5-21² or R.I. Gen. Laws § 3-5-23³ but instead found "that a cause, to justify

² R.I. Gen. Laws § 3-5-21 states 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.

(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.

³ 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.

action, must be legally sufficient, that is to say, it must be bottomed upon substantial grounds and be established by legally competent evidence.” See also *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269 (R.I. 1984); *Edge-January, Inc. v. Pastore*, 430 A.2d 1063 (R.I. 1981). In *Chernov*, renewal was denied because the licensee’s president had supported perjury of two (2) minors that had been served by the licensee. In *Edge-January*, the renewal was denied as it was found that the neighbors’ testimony had shown a series of disorderly disturbances happening in front of the licensee’s premises that had their origins inside.

In discussing the type of evidence required to be proved for a denial, the Rhode Island Supreme Court found in *A.J.C. Enterprises, Inc. v. Pastore* as follows:

We have said at least twice recently that there need not be a direct causal link between incidents occurring outside or nearby a drinking establishment and its patrons. Such a link is established when it can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within. *The Edge-January . . . Manuel J. Furtado, Inc. v. Sarkas*, 373 A.2d 169, 172 (R.I. 1977).

While this is a denial of renewal matter, it is similar to a revocation case in that there needs to be finding of cause. 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.

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.

D. Arguments

The Appellant argued that none of the witnesses at the Board hearing tied any of acts complained about to the Appellant. The Appellant argued that there was no active violation that has not been handled by the Board or is not on appeal so that the renewal hearing was not also a violation hearing.

The City argued that there need not be a violation to deny a renewal. The City argued that proof of ongoing nuisances that can be reasonably inferred to a licensee can be grounds for denial. The City argued that Board relied on testimony and evidence and found the Appellant has had numerous problems on which it based its denial.

E. Whether the Appellant’s Application to Renew License should be Granted⁴

In *AJC Enterprises*, the Court found that the neighbors who all lived in the area “testified at length concerning the increase in noise, parking congestion, litter, public urination, patrons either screaming, intoxicated, or pugnacious, as well as an increase in various other activities, all of which disrupted the neighborhood’s established way of life.” *Id.* at 274. Further, the Court found as follows:

⁴ At the stay hearing, the parties agreed that there were no outstanding “show cause” hearings for Appellant at the Board level and that any disciplinary hearings against the Appellant had been adjudicated by the Board; though, some were on appeal to the Department. The Department currently has a consolidated appeal which relates to three (3) matters which are appeals of administrative penalties for smoking inside the bar and a fourth matter which is an appeal of a 60 day suspension for disorderly conduct inside the bar. For the suspension appeal, there is no dispute that there was a fight inside the bar so that the issue on appeal is whether the 60 day suspension was the appropriate sanction. The Board has not based its denial of the renewal on these matters that are on appeal to the Department but rather on what it found was an ongoing nuisance in the neighborhood caused by the Appellant.

In this case several witnesses testified that they watched people urinate on private property after leaving Back Street and that when the establishment closed at night there was a great deal of noise because people were yelling, screaming, slamming car doors, and revving engines. These occurrences did not take place before Back Street opened. We feel it is reasonable to infer from the evidence that the undesirable activities that occurred outside and around Back Street had their origin within. Consequently, we shall not disturb the conclusions and the actions of the trial justice. *Id.* at 275.

In contrast, the evidence at the Board hearing had no specifics regarding any incidents that could be considered nuisances that could be directly or indirectly related to the Appellant. The testimony was from local businesses and focused on a general concern with Federal Hill and the belief that the quality of life was deteriorating. However, no one spoke of what exactly was a nuisance in the area (e.g. fights in the street, litter, public drunkenness, public urination etc.) that was causing this general concern. One witness felt business was down because people were scared of Atwells Avenue. One witness said that people were fearful. However, what this specific impact on the community actual consists of was not presented. The only specific incidents raised was by Principe which is a 60 day suspension on appeal so is not related to the general nuisance on which the Board based its denial. Principe also raised a March incident but gave no specifics regarding the Appellant. Based on the testimony at the Board hearing, there was no evidence of any specific type of nuisance from which an inference could be drawn that the Appellant was directly or indirectly causing a nuisance.

VI. FINDINGS OF FACT

1. On or about November 27, 2014, the Board denied the Appellant's renewal application for License.
2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed that decision by the Board to the Director of the Department.

3. A *de novo* hearing was held on January 2, 2015 before the undersigned sitting as a designee of the Director. The parties rested on the record.

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

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

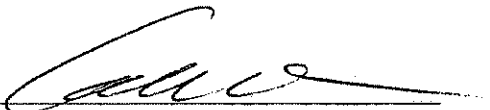
1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-7-21 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. In this *de novo* hearing, a showing was made by the Appellant to overturn the denial of renewal.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the decision of the Board denying the Appellant's License renewal be overturned and the Appellant's License renewal be granted.

Dated: JANUARY 5, 2015

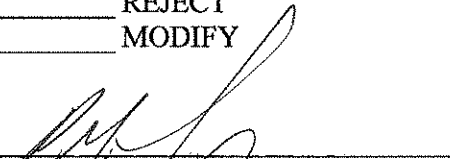

Catherine R. Warren
Hearing Officer

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: 5 Jan 2015

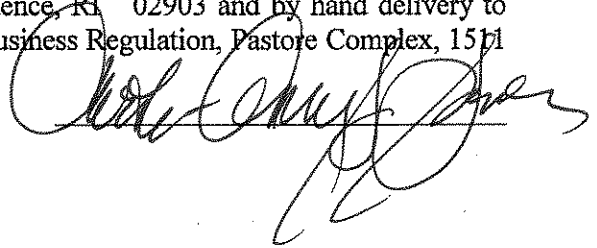

Paul McGreevy
Director

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 5th day of January, 2015 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 Mario Martone, 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, 1571 Pontiac Avenue, Bldg. 68-69, Cranston, RI 02920.

A handwritten signature in black ink, appearing to be "John J. ...", is written over a horizontal line. The signature is cursive and somewhat stylized.