

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

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ATO, Inc. d/b/a Skarr Lounge,  
Appellant,

v.

City of Providence, Board of Licenses,  
Appellee.

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DBR No.: 14LQ060

**RECOMMENDATION AND INTERIM ORDER GRANTING MOTION  
FOR STAY**

**I. INTRODUCTION**

ATO, Inc. d/b/a Skarr Lounge (“Appellant”) seeks a stay of the City of Providence, Board of Licenses’ (“Board”) decision taken on November 27, 2014 to deny renewal of its Class BX liquor license (“License”). The Board objected to the Appellant’s motion. This matter came before the undersigned on December 2, 2014 in her capacity as Hearing Officer as the designee of the Director of the Department of Business Regulation (“Department”).

**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.*

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 § 3-5-21<sup>1</sup> or R.I. Gen. Laws § 3-5-23<sup>2</sup> but instead found “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.” 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

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<sup>1</sup> R.I. Gen. Laws § 3-5-23 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.

<sup>2</sup> 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.

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*, 473 A.2d 269, 275 (R.I. 1984) 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.

#### IV. THE REASONS GIVEN FOR DENIAL OF RENEWAL

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 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 Board's attorney advised the Board that it needed to consider the evidence before the Board carefully and differentiate between systemic problems in the city and Federal Hill and any problems that the evidence shows are directly caused by the Appellant.

The City councilor, Brian Principe, for the Federal Hill area spoke against the renewal. He based his opposition on the 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. Berge Zobian who owns a gallery on Federal Hill spoke against the renewal but his opposition was based on another liquor licensing establishment and not the Appellant's. Louise Ellis who owns a bakery on Federal Hill opposed the renewal application because 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 because he thinks people are afraid of Atwells Avenue.

## 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 Appellant argued that pursuant to *Edge-January*, a liquor license renewal can be denied “for cause” but cause needs to be based on substantial grounds with legally competent evidence. The Appellant argued that a review of the transcript of the Board hearing demonstrates that the witnesses testified generically about problems in the area or “that location” or about another bar but there was no direct evidence linking disorderly conduct with the Appellant. The Appellant pointed out that the Board’s own attorney indicated that there were no specific links to the Appellant. (p. 17 of transcript). The Appellant argued that whether the *Harsch* or the *Department of Corrections* standard is applied, a stay should be granted. The Appellant argued that there was no evidence in the record linking it to any violations or

disorderly conduct and if after hearing the denial was overturned and a stay had not been granted, the Appellant's License would end up having been suspended without any basis. The Appellant also pointed out its owner's license for The Rack d/b/a Smoke had been renewed by the Board so that the Board had found that he was a competent licenseholder.

The Board agreed with the standard under *Edge-January* but argued that pursuant to *AJC Enterprises*, one does not need to make a direct link to the conduct but can reasonably infer from the disorderly conduct that the disturbances emanated from inside a bar. Further, the Board argued that under the case law, the licensee has the onerous obligation to control its premises and patrons so as not to create a nuisance and while the nuisance might not be illegal, a licensee has the obligation not create a nuisance. Thus, the Board argued it only needed to determine the negative impact on the community and draw the inferences that it did. The Board argued that monetary impact is not considered irreparable harm. The Board argued that the renewal hearing was a chance for the public to testify as to the Appellant's impact on Federal Hill.

In response, the Appellant argued that there are also at least five (5) other class BVX licensees within 500 feet of the Appellant and while it is true that a direct connection need not be made between a licensee and the nuisance, one cannot make the indirect connection between the Appellant and any nuisance because there are five (5) other licensees in walking distance from which such conduct could emanate and one cannot pick and choose which establishment to blame. In response, the Board argued that *AJC Enterprises* was able to make such an indirect link when there were 23 other liquor establishments in the vicinity.

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.<sup>3</sup>

## VII. DISCUSSION

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.

Liquor licensees are responsible for conduct that arises within their premises and for conduct that occurs off premises but can be reasonably inferred from the evidence had their origins inside. The Board argued that the Board made a determination that the nuisances occurring outside were indirectly caused by the Appellant's. When the Appellant argued that there were at least five (5) other liquor licensees from which nuisances could emanate, the Board argued that *AJC Enterprises* was able to link the nuisances to that appellant despite there being 23 other liquor licensees in the neighborhood. It is unclear from the *AJC Enterprises* decision how close those licensees were to that appellant. However, 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:

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<sup>3</sup> For the other matters on appeal, see *ATO d/b/a Skarr v. Providence BOL*, DBR No. 14LQ0031, *ATO d/b/a Skarr v. Providence BOL*, DBR No. 14LQ0051, *ATO d/b/a Skarr v. Providence BOL*, DBR No. 14LQ0014, and *ATO d/b/a Skarr v. Providence BOL*, DBR No. 12LQ0076.

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. One Board member noted on the record that the impact on the community is from the Appellant and other establishments but the Appellant was the establishment before the Board. However, what this specific impact on the community actual consists of was not presented to the Board. The only specific incidents raised was by Principe which is a 60 day suspension on appeal so is not related to the general nuisance/deterioration of quality of life on which the Board based its denial. Principe also raised a March incident but gave no specifics regarding the Appellant. Based on the evidence presented at the Board hearing, the Appellant has a strong likelihood of success on the merits of its appeal.

The Board (an interested party) has an interest in ensuring that liquor licensees – where the public gather - are compliant with their statutory obligations. However, there was not a showing that the Appellant was not complying with its statutory obligations. In addition, there has been no evidence of any public protection interest.



**VIII. CONCLUSION**

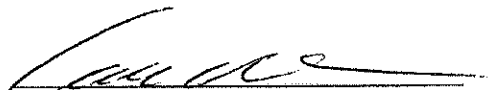
Based on the forgoing, the Appellant has made a showing under either *Harsch* or *Department of Corrections* that a stay should issue.

**IX. RECOMMENDATION**

Based on the forgoing, the undersigned recommends that the Appellant's motion for a stay of the denial of License be granted.<sup>4</sup>

**A DE NOVO HEARING WILL BE SCHEDULED.<sup>5</sup>**

Dated: 12/3/14

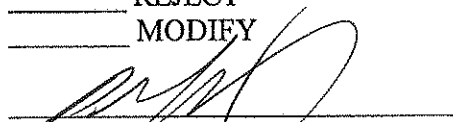
  
Catherine R. Warren  
Hearing Officer

**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:

X ADOPT  
       REJECT  
       MODIFY

Dated: 3 Dec 2014

  
Paul McGreevy  
Director

Entered this day as Administrative Order Number 14-666 on 3rd of December, 2014.

<sup>4</sup> This granting of the stay does not stop the conditions of the stay granted in the 60 day suspension matter. See order regarding stay issued in *ATO d/b/a Skarr v. Providence BOL*, DBR No. 14LQ0051 (9/18/14).

<sup>5</sup> This hearing will also be for the other consolidated appeal matter regarding this Appellant.

**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 3<sup>rd</sup> day of December, 2014 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 Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, RI 02904 and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920.

