STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX, BLDG 68-69
1511 PONTIAC AVENUE
CRANSTON, RI 02920

IN THE MATTER OF:	:	
P.B. Management Inc. and Peter Buonanni d/b/a Cornerstone Pub,	:	**DBR No.: 14LQ003**
Respondent.	:	

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause Why License Should not be Revoked or Suspended, or Administrative Penalty Imposed, Appointment of Hearing Officer, and Notice of Pre-Hearing Conference ("Order to Show Cause") issued to P.B. Management, Inc. and Peter Buonanni d/b/a Cornerstone Pub ("Respondent") by the Department of Business Regulation ("Department") on April 25, 2014. A pre-hearing conference was held on October 31, 2014. The undersigned was substituted in as hearing officer by order of the Department dated January 3, 2015. The Respondent holds a Class BV liquor license ("License"). The hearing started on July 15, 2015 but was continued for the filing and hearing on the Department's Motion to Amend the Order to Show Cause and the Respondent's objection thereto. A hearing was held on said motion on September 10, 2015 with the Department granting the Motion to Amend by order dated September 26, 2015. Hearings were then held in this matter on January 12 and 14, 2016 with oral argument being made on April 4, 2016 and written arguments filed by April 11, 2016. The parties were represented by counsel.

II. JURISDICTION

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 3-1-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

III. ISSUE

The issues set forth in the pre-hearing conference order dated November 12, 2014 are whether the Respondent is in violation of R.I. Gen. Laws § 3-8-1, R.I. Gen. Laws § 3-8-10, and R.I. Gen. Laws § 3-8-6(a). As discussed below, any violation of those laws then raises the issue of violations of R.I. Gen. Laws § 3-5-21 and R.I. Gen. Laws § 3-5-23 on which the statutory bases for the Department's action rests.

IV. TESTIMONY AND MATERIAL FACTS

The parties agreed to the following facts:[1]

1. The parties agreed that the allegations contained in paragraphs one (1) through six (6) of the Order to Show Cause are true.

2. The Respondent P.B. Management Inc. has held a Class BV liquor license for the premises located at 273 Nooseneck Hill Road Exeter, Rhode Island, since April of 2012.

3. The Respondent P.B. Management Inc. previously held a Class BV liquor license for Cornerstone Pub which was located at 255 Lambert Lind Highway, Warwick, Rhode Island from 1998 to 2010.

4. The Respondent has never been charged with any type of liquor law violation in all of the years that it has been a license holder.

5. On November 22, 2013, between 6:00 p.m. and 7:10 p.m., the Respondent P.B. Management Inc. served Zachary Thole two (2) 16-oz Coors Light Drafts and one (1) Seven & Seven, which are alcoholic beverages. On that date, Thole was 20 years old. Thole was not carded by Respondent P.B. Management Inc.

6. On November 22, 2013, between 6:00 p.m. and 7:10 p.m., the Respondent P.B. Management Inc. served Rowan Alexander one (1) Angry Orchard (hard cider) and one (1)

[1] See Joint Exhibits One (1) and Two (2) for the complete stipulation of facts.

martini, which are alcoholic beverages. On that date, Alexander was 20 years old. Alexander was not carded by Respondent P.B. Management Inc.

7. On November 22, 2013, between 6:00 p.m. and 7:10 p.m., the Respondent P.B. Management Inc. served Nicholas Gershkoff one (1) Coors Light Draft and one (1) coffee martini, which are alcoholic beverages. On that date, Gershkoff was 20 years old. Gershkoff was not carded by Respondent P.B. Management Inc.

8. On November 22, 2013, between 6:00 p.m. and 7:10 p.m., Taylor Browning consumed part of one (1) Angry Orchard (hard cider), which is an alcoholic beverage on Respondent P.B. Management Inc.'s premises. On that date, Browning was 18 years old. Browning was not carded by Respondent P.B. Management Inc.

9. Zachary Thole, Nicholas Gershkoff, and Rowan Alexander left the Cornerstone Pub's premises on November 22, 2013 at approximately 7:10 p.m. in an automobile being operated by Zachary Thole.

10. The automobile collision occurred about 7:30 p.m. when the vehicle operated by Zachary Thole came in contact with a utility pole.

11. On November 22, 2013, at approximately 7:30 p.m., as a result of the collision, Nicholas Gershkoff was thrown from the vehicle and was pronounced dead at the scene. Zachary Thole and Rowan Alexander were transported to the hospital with injuries.

12. On September 8, 2014, Zachary Thole pled *nolo contendere* to the charge of DUI Death Resulting based on the November 22, 2013 automobile collision.

13. On October 3, 2012, Zachary Thole pled *nolo contendere* to the charge of DUI 1st Offense.

14. On November 9, 2011, Nicholas Gershkoff pled *nolo contendere* to the charge of DUI 1st Offense.

15. Zachary Thole was born in March, 1993.

16. Nicholas Gershkoff was born in April, 1993.

Jo-Ann Gershkoff testified on the behalf of the Department. She testified that she is the mother of Nicholas Gershkoff ("Gershkoff") who died in the car accident on November 22, 2013.

She testified that her son was 20 years old and his death devastated her and her two younger children and that she has lost everything and is trying to reconcile the "old" her and "new" her.

Kevin Barnum ("Barnum") testified on behalf of the Department. He testified that he was born in 1992 and is familiar with the Respondent and has patronized that establishment. He testified that the first time he was served alcohol at the Respondent, he would have been 19 or 20, and that over a course of a year, he was served three (3) or four (4) times while he was underage and was not asked for identification ("ID") and did not own a fake ID. He testified that prior to November 22, 2013, he witnessed Zachary Thole ("Thole") being served alcohol when he was underage at the Respondent about three (3) or four (4) times about six (6) months to a year prior to that date. He testified that Thole was never carded and to his knowledge did not own a fake ID. He testified that prior to that date, he witnessed Gershkoff being served alcohol there about three (3) or four (4) times when he was under 21. He testified that he witnessed Rowan Alexander being served at the Respondent when she was underage about three (3) or four (4) times. He testified that it was two (2) or three (3) different bartenders or waitresses serving them on these times.

On cross-examination, Barnum testified that he does not recall specific dates when he or his friends were first served by the Respondent when they were underage. He testified that he had previously testified in a deposition in another matter,[2] that he remembered Gershkoff being carded and then ordering a soda, but then a different bartender would serve him thinking he was 21 and not ask for an ID. He testified that in the deposition he testified that he thought Gershkoff getting served was a misunderstanding and that if the Respondent had known Gershkoff was underage, it would have been upset if it knew it was serving someone under 21 and one of the waitresses was

[2] The civil matter referred to during the hearing in terms of depositions taken is the decedent's wrongful death negligence claim filed in Superior Court against the Respondent. Based on the parties' representations, the suit has been settled.

very upset when she found out that Gershkoff had been served under 21 and that she was always carding people. He testified that he had described the Respondent in the deposition as running a very tight ship in terms of service of alcohol.

On redirect examination, Barnum testified that he saw Gershkoff be carded once at the Respondent, but there were three (3) or four (4) times he was served, so that would be two (2) or three (3) times that he was not carded. He testified that certain bartenders vouched for certain people because they thought they looked older or were with an older crowd and there were certain bartenders who were just misled. He testified that they (his friends) acted a little older and hung out with an older crowd, so there was no question except that one time that Gerskoff got carded.

Rowan Alexander ("Alexander") testified on behalf of the Department. She testified that she was born in 1993 and is familiar with the Respondent and had been served alcohol there when she was under 21 on multiple occasions. She testified that the first time was on August 31, 2013 and she was probably served between that time and November 22, about once per week. She testified that she was never asked for ID and did not own a fake ID. She testified that she remembered Thole being served alcohol at least eight (8) or nine (9) times when he was 20 years old from August through November 2013, but she never witnessed him being carded and to her knowledge did not own a fake ID. She testified that Gershkoff was served while underage about eight (8) or nine (9) times between August 31 and November 22, 2013 and that she never witnessed him being carded at the Respondent and to her knowledge did not own a fake ID. She testified about three (3) or four (4) different waitresses served them.

On cross-examination, Alexander testified that as of November 22, 2013, Thole was 20 and was three (3) months short of being 21 and was working full time at his father's restaurant in the kitchen. She testified that Thole was her boyfriend. She testified that on November 22, 2013,

Gershkoff was four (4) months short of being 21. She testified that she, Thole, Barnum, and Gershkoff were friends who all shared a house at that time, were paying rent, working and, enjoyed socializing with alcohol. She testified that on November 22, 2013, at the scene of the fatal accident, she misled the State Police by telling them that she had been driving. She testified that on that night, they went to the Respondent for dinner, not for getting drunk. She testified that in the civil case she has testified that whenever there had been a question about Thole's ability to drive after drinking, she would drive and Thole would always yield his keys if asked. She testified that nobody on November 22 requested that Thole not drive. She testified that in her deposition, she testified that Thole had been driving slowly and Gershkoff had poked fun at him for going slowly and that the accident occurred on a freshly paved curve where rain had fallen. She testified that in her deposition, she testified that Thole's tires were bald and worn and they were planning on replacing the tires the next day. She testified that when the truck went into the curve, the back end slid out and Thole hit the brakes resulting in a roll over. She testified that Gerhkoff and Thole consumed alcohol that night prior to going to the Respondent. She testified that when asked prior to the hearing by the Department's attorney when was the first time she went to Respondent, she was able to figure out through social media that it was August 31, 2013. She testified that she had been advised that testifying about drinking under 21 could be viewed as a violation and she was never promised anything for her testimony. She testified that she did not remember the dates of the second or third time that they went to Respondent, but the second time was probably a week after the first time.

On redirect, Alexander testified that when the police responded to the car crash on November 22, 2013 she told them that she had been driving because she did not realize that Gershkoff was dying and because Gershkoff and Thole both had DUIs and she wanted to protect

them from getting in trouble. On recross examination, Alexander testified that Thole and Gershkoff obtained alcohol from a liquor store prior to going to Respondent's and that they drank in the truck on the way to the Respondent.

Taylor Browning testified on behalf of the Department. She testified that she was born in 1995 and never owned a fake ID and is familiar with the Respondent. She testified that she has been to Respondent's twice, once on September 27, 2013 after she got home from Missouri and on November 22, 2013. She testified that on the September date, she saw Thole and Alexander drink and they were not carded that night and that she drank and was not carded. She testified that Gershkoff was not with them in September. There were no questions on cross-examination.

Thomas Devine testified on behalf of the Respondent. He testified that he is 53 and is a supervisor of the overhead line at National Grid Electric and has been working there for 30 years. He testified that he is familiar with the Respondent. He testified that the Respondent is on his way home from work, so he and his wife will have dinner there during the week or on the weekends and meet friends. He testified that he is a regular and he and his wife probably go once per week and have frequented it since it opened in 2012. He testified that it is casual and family friendly and he knows the owner, Peter Buonanni ("Buonanni"), and Buonanni comes out regularly when on shift to visit customers and is hands-on in terms of management. He testified that the Respondent is well run and professional and the wait staff is friendly. He testified that he and his wife used to go to another place but when the Respondent opened, they started going there because of the atmosphere and friendliness. He testified that because his job has fluctuating hours, they go to Respondent at different times and on the weekends. He testified that he sees it as a "family casual place" with a mix of people on average about his age. There was no cross-examination.

William Manchester testified on behalf of the Respondent. He testified that he is 49 and retired from the Warwick Fire Department as a captain. He testified he lives about two (2) miles from the Respondent and has been going since it opened in 2012, and knows Bounanni. He testified that it is casual and professionally run and is a nice place that once can bring family and friends to and he is a regular. He testified that Bounanni is very hands on. He testified that it is an older crowd around his age and above, and a lot of families have dinner there. He testified that he has been there at opening around noon and at closing. There was no cross-examination.

Evan Hopkinson testified on behalf on the Respondent. He testified that he knows the Respondent from when it was located in Warwick and he used to go there and even went to it before it became the Respondent when it was called Joe's Place. He testified that when Buonanni bought the place, there was a change in that the police stopped having to be called and people stopped always being drunk. He testified that he heard through the grapevine that Bounanni opened a new place in Exeter and when he went to it he thought it looked great. He testified that he has become friendly with Bounanni and thinks he is a standup guy. He testified that the new place is a place one can bring family and kids, and he is a regular and when Bounanni is there, he is involved and comes out the floor. There was no cross-examination.

Buonanni testified on behalf of the Respondent. He testified that he is the owner of the Respondent. He testified that it originally was near the Warwick Mall and he bought it in 1998 and it was there until 2010. He testified that in Warwick, he held a liquor license without any violations. He testified that after the March 2010 floods, nothing was recoverable from the building and the business was closed for two (2) years and he reopened it in Exeter because it was his livelihood and what he wanted to do. He testified that it officially opened on April 1, 2012. See Respondent's Exhibit One (1) (photographs). He testified that the restaurant is involved in

the community and employs 35 people. He testified that prior to November 22, 2013, there had been no violations related to his liquor license, and that it has operated since November 22, 2013 without any violations. He testified that Exeter never charged the restaurant in anyway in relation to the events of November 22, 2013 and has continued to renew its license. He testified that prior to November 22, 2013, employees were trained in alcohol service and received the TIP certification. He testified that when he learned from the State Police about the accident that night, he turned over the surveillance video and cooperated with the State Police. He testified that after the accident happened, he bought an ID scanner, and required all food servers and bartenders to ask for two (2) forms of ID if someone was 21 or had out-of-state, military, or a passport as ID. He testified that he changed the bartenders' shifts from three (3) shifts to two (2) shifts so that servers would have a better feel for the customer base.[3] He testified that he had the staff recertified after the accident even though they were certified until 2015. See Respondent's Exhibits Two (2) (retraining/new policy) and Three (3) (initial certification). He testified that two (2) of his bartenders were arrested and faced criminal charges. He testified that he decided not to fire these employees because going forward, he thought it was in the best interest for such a violation not happen again so having these employees be able to explain to future employees the importance of ID'ing and what happened that night and what they went through would be a good deterrence. See Respondent's Exhibit Four (4) (menu).

On cross-examination, Buonanni admitted that he was on the premises on November 22, 2013 when the underage sales occurred.

[3] He testified that the shifts had been 11 a.m. to 4 p.m., 4 p.m. to 8 p.m., and 8 p.m. to closing, but now are 11 a.m. to 5 p.m. and 5 p.m. to closing.

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. Standard of Review for an Administrative Hearing

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, Administrative Law Treatise § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the "normal" standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the

evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

C. Relevant Statutes

R.I. Gen. Laws § 3-8-1 states in part as follows:

> Sales on Sundays and holidays – Sales to underage persons, intoxicated persons, and persons of intemperate habits. – Licenses issued under this title shall not authorize the sale or service of beverages on Sunday, nor on Christmas day excepting licensed taverns, clubs, victualing houses, and retail Class F licensed places when served with food to guests, and except in places operated under a retail Class E license described in this title . . . nor shall they authorize the sale or delivery to any underaged person as defined in this title for purposes of sale, possession and consumption of alcoholic beverages, either for his or her own use or for the use of his or her parents, or of any other person; or the sale of beverages to any intoxicated persons or to any person of notoriously intemperate habits. . . .

R.I. Gen. Laws § 3-8-10 states as follows:

> Possession of beverage by underage persons. – Any person who has not reached his or her twenty-first (21st) birthday and has in his or her possession any beverage as defined in this title shall be fined one hundred fifty dollars ($150) to seven hundred fifty dollars ($750) for the first offense, three hundred dollars ($300) to seven hundred fifty dollars ($750) for the second offense, and four hundred fifty dollars ($450) to nine hundred fifty dollars ($950) for the third or subsequent offense. In addition, any person who violates this section shall be required to perform thirty (30) hours of community service and shall be subject to a minimum sixty (60) day suspension of his or her driver's license, and upon a second offense may be ordered to undergo a substance abuse assessment by a licensed substance abuse professional.

R.I. Gen. Laws § 3-8-6 states in part as follows:

> Unlawful drinking and misrepresentation by underage persons – Identification cards for persons twenty-one and older. – (a) It is unlawful for:
>
> (1) A person who has not reached his or her twenty-first (21st) birthday to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing or having served or delivered to him or her alcoholic beverages; or
>
> (2) A person who has not reached his or her twenty-first (21st) birthday to consume any alcoholic beverage on premises licensed for the retail sale of alcoholic beverages or to purchase, attempt to purchase, or have another purchase for him or her any alcoholic beverage; or
>
> (3) A person to misrepresent or misstate his or her age, or the age of any other persons, or to misrepresent his or her age through the presentation of any of the following documents:

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.
>
> (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.

R.I. Gen. Laws § 3-5-23 states in part as follows:

> Revocation of license for criminal offenses or disorderly conditions – Action on bond.
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> ***
>
> (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.

D. The Hearing 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). In addition to reviewing local liquor licensing authorities' decisions on appeal, the Department may, pursuant to R.I. Gen. Laws § 3-5-21, bring an action against a licensee on its own motion. *Kmiec v. Liquor Control Hearing Board*, 87 R.I. 257 (1958).[4] In this matter, the Town of Exeter did not bring an action against the Respondent; however, the Department has chosen to bring such an action.

As the Department has statewide authority and indeed the statutory intent is to ensure statewide consistency, the Department reviews sanctions on appeal 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. 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). 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.). While this matter is a Department action and not an appeal, the same cases and considerations apply to determining the appropriate sanctions for any violations.

In order to impose discipline such as a revocation, cause must be found. *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

[4] See also *Green Point Liquors v. McConaghy,* 2004 WL 2075572 (R.I. Super) (discussion of *sua sponte* authority on part of Department to bring actions and to review local actions).

original). See also *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269 (R.I. 1984) (cause must be legally sufficient to justify revocation). Thus, in order to sanction a liquor license, there must be substantial grounds established by the preponderance of legally competent evidence

E. Arguments

The Department argued that under R.I. Gen. Laws § 3-8-1, it is a violation by a liquor licensee to serve someone underage, and it is illegal for someone underage to purchase alcohol under R.I. Gen. Laws § 3-8-6(1). The Department argued that it is a violation of R.I. Gen. Laws § 3-5-23(b) to violate any provision of Title III and such violations include whether alcohol is sold to or consumed by underage patrons. The Department argued that licensees are responsible for any violations on their premises.

The Department argued that the parties stipulated that a total of eight (8) alcoholic beverages were served on November 22, 2013 and they were purchased by three (3) minors with one (1) minor also consuming alcohol. The Department argued that this represents four (4) underage drinking violations.

The Department argued that for the allegations of underage drinking that were not stipulated to by the parties, the Department proved them by a preponderance of evidence. The Department argued that Barnum testified to three (3) or four (4) occasions and Alexander testified to eight (8) or nine (9) occasions of underage drinking. The Department argued that Barnum corroborated Alexander's testimony since Barnum testified he saw Alexander drink three (3) or four (4) times and Browning corroborated Alexander's testimony since she saw her drink in September, 2013. In addition, the Department argued that Alexander, Barnum, and Browning testified they saw Thole drinking underage at various times (eight (8) or nine (9) times, three (3) or four (4) times, and once respectively). In addition, the Department argued that Alexander

testified that she saw Gershkoff drink eight (8) or nine (9) times, and Barnum testified he saw Gershkoff drink three (3) or four (4) times. The Department argued that the testimony included that the minors were not carded which was consistent with the facts agreed to for November 22, 2013. The Department argued that conservatively the number of underage violations prior to November 22, 2013 would be 27 (three (3) for Barnum and eight (8) each for Alexander and Thole and Gershkoff). The Department argued that the Respondent had a total of 31 underage violations.

The Department argued that Thole pled *nolo contendere* to DUI Death Resulting in relation to the accident. The Department argued that while the Respondent would argue that there were other factors contributing to this death, the alcohol consumed at the Respondent contributed to the accident which left a dreadful impact on the family and friends. The Department argued that proving causation does not necessarily exclude all other causes. *Chapman Street Realty, Inc. v. Department of Business Regulation*, 2002 WL 475281 (R.I. Super.). The Department argued that *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) found that no statute prescribes a standard for the imposition of sanctions so that a sanction that is reasonable to deter future violations is appropriate. The Department relied on *Santos v. Smith*, 99 R.I. 430 (1965) which upheld a revocation of a liquor license on the basis of four (4) underage violation on one (1) night and did not discuss any prior licensing violations. The Department argued that subsequent to *Santos*, the Department may have imposed lesser sanctions for cases involving underage drinking but those cases did not include a DUI Death Resulting so this is a different case. The Department argued there have been 31 underage drinking with one death resulting so that revocation is appropriate and is similar to *Cardio Enterprises d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, No. 06-L-0207 (3/28/07).

The Respondent argued that what happened on November 22, 2013 was a tragedy and the Respondent admitted to those violations so the issue is what is the appropriate penalty and that there are mitigating factors to be applied pursuant to Section 16 of the Central Management Regulation 2 *Rules of Procedure for Administrative Hearing* ("CMR2") related to a licensee's licensing history, acceptance of responsibility, and cooperation with the Department. The Respondent argued that it has had no violations for 18 years including the time prior to the accident and the two (2) years since. The Respondent argued it accepted responsibility and cooperated with the police on the night of the accident and took actions to ensure this type of violation would not happen again by buying an ID scanner, changing staff hours, and retraining.

The Respondent argued that there has never been a case where the liquor license was revoked after the first case of underage drinking. The Respondent relied on *Stage Bands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328508 (R.I. Super) in terms of progressive discipline. The Respondent argued that this is an isolated incident in 18 years and that progressive discipline is applied in order to ensure appropriate behavior and if a licensee cannot correct its behavior, then the license will be revoked. The Respondent argued that this matter is not a *Pakse* situation which was four (4) underage violations in three (3) years or *Dacosta Liquors, Inc. v. City of Providence, Board of Licenses*, DBR No. 14LQ038 (11/20/14) which revoked a liquor license after a series of progressive discipline over three (3) years for underage violations. The Respondent also argued that there are many Department cases in which underage violations resulted in the imposition of administrative penalties and progressive suspensions. The Respondent argued that there are questions over why the accident occurred unrelated to the underage drinking. In addition, the Respondent argued that the Department is trying to bolster its

attempt to revoke an 18 year unblemished license by presenting vague testimony about underage drinking prior to November 22, 2013 without any details in order to subvert progressive discipline.

F. The Violations

a. November 22, 2013

The Respondent agreed to four (4) underage drinking violations on November 22, 2013 (Thole, Alexander, Gershkoff, and Browning).

b. Prior to November 22, 2013

The Department amended the Order to Show Cause to add allegations of underage drinking prior to November 22, 2013. Barnum, Alexander, and Browning testified as to various estimates of how often they drank at Respondent. Barnum testified three (3) or four (4) times. Alexander testified eight (8) or nine (9) times. Browning remembered going after she got off an airplane coming back from Missouri and she was there on November 22, 2013. Thole did not testify. The Department relied on their friends' testimony as to how many times Thole and Gershkoff drank at the Respondent prior to November 22, 2013.

It is believable that the friends drank at the Respondent prior to November 22, 2013. However, it is hard to quantify how many times in that the testimony was mostly estimates. Browning was able to remember the date in September, 2013 based on her return flight. Alexander remembered the first time she went to Respondent on the basis of social media. The Department estimated on the conservative side based on the witnesses' testimony; however, the Department's estimate was eight (8) times for Thole based on Alexander's rather than Barnum's estimate of three (3) or four (4) times for Thole. Barnum testified as to seeing Thole and Gershkoff drink underage three (3) or four (4) times; however, Alexander testified to eight (8) or nine (9). The conclusion to be drawn from the testimony is not a specific number of underage violations, but

rather that Gershkoff, Thole, Barnum, Alexander, and Browning all drank at least once at the Respondent prior to November 22, 2013.

G. The Licensing History

The parties agreed that the Respondent held a Class BV liquor license in Warwick for 12 years without any violations and has not had any violations since 2012 when it received its Class BV license in Exeter. Thus, for the 16 years[5] that it has held a Class BV license, it has not had any violations including for the over (2) years since the accident.

H. When a Suspension or Revocation of License is Justified

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, 859 (R.I. 1980). 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 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 (R.I. 1966). See also *Scialo v. Smith*, 99 R.I. 738 (R.I. 1965).

The Department's action is based on R.I. Gen. Laws § 3-5-23(b) which provides that any licensee that "permits any of the laws of this state to be violated . . . . in addition to any punishment or penalties that may be prescribed by statute for that offense, he or she may be summoned before . . . the department . . . [and if it is found] the licensee has violated any of the provisions of this title or has permitted any of the things listed in this section" then the license may be suspended, revoked, or another order entered. Additionally, R.I. Gen. Laws § 3-5-21(a) provides that "[e]very

[5] The Respondent referred to an 18 year unblemished record, but there was a two (2) year gap in licensing due to the relocation of the restaurant after the March, 2010 floods.

license is subject to revocation or suspension and a licensee is subject to fine . . . by the department . . . on its own motion, for breach by the holder of the license of the conditions on which it was issued or . . . for breach of any provisions of this section." Underage drinking violations have been found to be violations of R.I. Gen. Laws § 3-5-21.[6]

It is important to note the statutory bases for the Department's action since it does not relate to the provisions regarding disorderly conduct in R.I. Gen. Laws § 3-5-23 and that pertinent case law. Under the analysis for disorderly conduct, a licensee is responsible for disorderly conduct that arises within the premises and actions that can be linked directly or indirectly to its patrons for which it has a duty to supervise. *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964). However, the statutory bases for any finding against the Respondent is not disorderly conduct but rather a violation of State law, liquor licensing law, and/or the conditions of licensing (compliance with the law).

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, supra (*disturbances and a shooting on one night justified revocation under disorderly conduct analysis) and *Pakse, supra* (upholding revocation of license when had four (4) incidents of underage sales within three (3) years). See also *Cardio Enterprises* (killing of patron with incident starting inside and escalating outside justified revocation under disorderly conduct analysis); *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).

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[6] *Secreto, LLC v. City of Providence, Board of Licenses*, DBR No. 15LQ010 (8/11/15); *Finnegan's Draft House, Inc. v. City of Providence Board of Licenses*, DBR No. 15LQ005 (6/3/15); *Eagle Social Club d/b/a Ava's Wrath v. Providence Board of Licenses*, DBR No. 14LQ056 (12/23/14) ("Eagle II"); and *Eagle Social Club d/b/a Ava's Wrath v. Providence Board of Licenses*, DBR Nos. 14LQ021; 14LQ023 (7/29/14 ("Eagle I").

I. Prior Department and Court Cases

In *Pakse*, the Court noted that there were no statutorily prescribed standards governing the imposition of sanctions for liquor control violations, and that the local licensing authority had discretion to impose what it deemed appropriate. In that case, the Department upheld the local licensing authority's decision to revoke the license after the fourth underage violation. Thus, the Department and Superior Court upheld the progressive discipline imposed on said licensee. The Court found that the local authority was authorized to impose a reasonable sanction that would deter the licensee from repeatedly violating the law, and that the Department had found that the local authority's imposition of a two (2) day suspension for the first offence with progressively harsher sanctions for the second and third offense, and revocation for the fourth was not arbitrary and capricious because it was based on the premise that the licensee's continued violations posed a danger to the community. The Court upheld the Department's conclusion that revocation represented a reasonable punishment after the logical progression of suspension sanctions.

As stated above, the Department has consistently imposed progressive discipline except for egregious violations under the disorderly conduct statutory provisions such as in *Stage Bands*. For example, the Department imposed progressive discipline in *Eagle I* where the local authority had revoked a liquor license without imposing progressive discipline. In that matter, the licensee previously had an eight (8) day suspension for four (4) different instances of underage drinking, and the Board imposed a revocation after more underage drinking violation. Instead of revocation, the Department reduced the revocation to 45 days and imposed a 60 day suspension for another underage violation. In *Eagle II*, the Department upheld the revocation of the license after the fourth underage violation in one (1) year. As in *Pakse*, the Department and the local authority concluded in *Eagle II* that progressive discipline was ineffective as the licensee had continuous

violations in one (1) year. The same analysis was used in *Dacosta Liquors Inc.*, *supra*, in which the licensee had various underage violations between 2012 and 2015 and received an administrative penalty, a three (3) day suspension, another administrative penalty, a 20 day suspension, another administrative penalty, and finally revocation. See also *Bourbon Street, Inc. d/b/a Senor Frogs v. Newport Board of License Commissioners*, 1999 WL 1335011 (R.I. Super).[7]

Recently, the Department entered into a consent agreement with a restaurant regarding underage drinking. *Finnegan's Draft House Inc. d/b/a Finnegan's Wake*, DBR No. 13LQ120 (12/16/13). In that matter, the Department brought the action regarding underage drinking and other violations and the licensee agreed to an administrative penalty of $750 per underage violation (of which there were 15) and to a purchase an ID scanner and to a three (3) day suspension. Subsequently, the City of Providence brought an action against the same licensee and the licensee admitted to 19 underage violations during September, October, and November of 2014. The decision reviewed the licensee's licensing history, which included administrative penalties in 2012 and 2013 for underage drinking prior to the consent agreement. The Board imposed a 14 day suspension and a $14,250 penalty which was upheld by the Department. See *Finnegan's Draft House Inc. v City of Providence board of Licenses*, DBR No. 15LQ005 (6/3/15). Recently the Department entered into consent orders regarding underage violations where minors had been arrested for underage drinking. One licensee agreed to buy ID scanning equipment and improve protocols for checking for ID's and the other licensee paid a $750 administrative penalty and agreed to buy ID scanning equipment and improve protocols for checking ID's. See *In the Matter*

[7] Superior Court upheld decision to revoke the liquor license after a series of progressive discipline over a year for serious overcrowding on different nights, 18 arrests for underage drinking, illegal drinks promotion, two (2) different disorderly conduct violations, and finally another three (3) incidents of underage drinking.

of: Sand Hill Associates, Ltd. d/b/a Charlie O's Tavern on the Point, DBR 13LQ121 (4/9/14) and *In the Matter of: Hammerhead Grill, Inc. d/b/a Bon Vue Inn*, DBR 14LQ001 (3/7/14).

The Department relied on *Santos v. Smith*, 99 R.I. 430 (1965) which upheld the revocation of the liquor license by the local authority after four (4) instances of underage drinking. This case does not discuss progressive discipline. It is unclear from the Supreme Court's recitation of facts whether there had been other violations prior to the revocation which arose from a police raid on the establishment since the police believed it was being patronized by minors. Despite that case where there is no discussion of the licensee's licensing history, the Department has consistently imposed progressive discipline.

In a 2003 Department case, the Department reviewed a Class B liquor licensee with a series of violations. In 1998, said licensee received a one (1) day suspension and administrative penalty of $500 (stayed pending no violations prior to renewal) for an underage violation. In 2000, the licensee received a two (2) day suspension and $750 administrative penalty for underage violations. In 2001, the licensee ended up agreeing to a five (5) day suspension and $1,000 administrative penalty for excessive serving where the patron became unconscious and the licensee never called for medical assistance. After that violation, the local authority warned the licensee that another violation could result in revocation. In December 2001, the licensee was caught serving an underage violation by a police compliance check. In May, 2002, the licensee overserved an intoxicated patron. With the two (2) further violations (December, 2001 and May, 2002), the local authority revoked the license which was upheld by the Department. The Department justified that revocation because of the licensee's repeated pattern of violations. See *China Village v. Licensing Board, Town of Westerly*, DBR No. 02-L-0155 (2/14/03).

China Village found that the two (2) day suspension for an underage violation was consistent with statewide standards for a first time violation for serving to underage individuals. It cited to cases where two (2) day suspensions were imposed, but noted that some licensees received more severe sanctions for first time underage violations. See *East Street Liquors, Inc. v. Pawtucket Board of License Commissioners*, LCA-PA-99-07 (9/8/99) (two (2) day suspension); *C.J. Associates, Inc. d/b/a Craig's Place v. Newport Board of License Commissioners*, LCA-NE-98-04 (10/6/98) (two (2) day suspension); and *NWPT, Inc. d/b/a Pineapple Pub v. Newport Board of License Commissioners*, LCA-NE-97-28 (6/24/98) (one-week suspension, $500 penalty). In *C.J. Associates*, the Department reviewed several underage violation cases that had recently (at that time) arisen in Newport. The Department concluded serving to minors is general worthy of some period of suspension, absent unusual facts or circumstances. The Department further concluded that a two (2) day suspension was warranted for an isolated incident of underage service as opposed to a local case that imposed a one-week suspension for six (6) underage patrons being served and *NWPT, Inc.* which imposed a one-week suspension for two (2) underage violations and repeated misuse of the minor book. As discussed above, there is not a mechanical grid for sanctions, but the sanctions are to be reasonable and progressive absent an egregious violation.[8]

Jake and Ella's Inc. v. Department of Business Regulation, 2002 WL 977812 (R.I. Super.)[9] found that "[t]here are times when the sanction imposed by an agency, while permitted by law, is so arbitrary and extreme that it constitutes a clear abuse of discretion" so that under the arbitrary and capricious Administrative Procedures Act (R.I. Gen. Laws § 42-35-15) standard, the Court

[8] In reviewing the sanctions, *China Village* found that the inquiry on appeal was whether the revocation was excessively harsh or arbitrary or whether it was a reasonable sanction consistent with past statewide practices.
[9] This case was a liquor appeal from the Department to Superior Court.

can reverse the lower court's decision. *Jake and Ella*'s at 5.[10] The Court went on to find there are two (2) components to administrative decision: 1) a determination of the merits of the case; and 2) determination of the sanction and while the former is mainly factual, the latter not only involves ascertainment of factual circumstances but the application of administrative judgment and discretion. *Jake and Ella*'s concluded that the facts to be considered in weighing the severity of the violation should include the frequency of the violations, the real or potential danger to the public posed by the violation, the nature of any previous violations and sanctions, and any other facts deemed relevant to fashioning an effective and appropriate sanction. These are the same kind of factors contained in the CMR2.[11] [12]

The Department argued that because this matter is underage drinking with death resulting, it can be differentiated from any other Department matters which only impose suspensions and/or administrative penalties for underage drinking violations.

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[10] In *Jake and Ella's*, the licensee had two (2) after hour violations with the first violation receiving a monetary sanction and the second violation receiving a revocation. The Court found that "sanction discrepancies can be certainly tolerated to a certain extent" but "the discrepancy in this case is disproportionate to the underlying circumstances" since the local authority jumped from a monetary fine to a revocation for identical violations without a finding that the violations were egregious and extreme.

[11] The issue in *Jake and Ella's* is not that every sanction must be exactly the same for every violation for every club but rather *Jake and Ella's* stands for the proposition that a sanction must be proportional to the violation and if there is an excessive variance than that could be arbitrary and capricious. Unevenness in the application of a sanction does not make it unwarranted in law. See *Pakse*.

[12] Section 16 of CMR2 provides as follows:

> Penalties
>
> (A) In determining the appropriate penalty to impose on a Party found to be in violation of a statute(s) or regulation(s), the Hearing Officer shall look to past precedence of the Department for guidance and may consider any mitigating or aggravating circumstances.
>
> (1) Mitigating circumstances may include, but shall not be limited to, the following: the Party's licensing history, i.e. the absence of prior disciplinary actions; the Party's acceptance of responsibility for any violations; the Party's cooperation with the Department; and the Party's willingness to give a full, trustworthy, honest explanation of the matter at issue.
>
> (2) Aggravating circumstances may include, but shall not be limited to, the following: the Party's prior disciplinary history; the Party's lack of cooperation and/or candor with the Department; the seriousness of the violation; whether the Party's act undermines the regulatory scheme at issue; whether there has been harm to the public; and whether the Party's act demonstrates dishonesty, untrustworthiness, or incompetency.
>
> (B) The finding of mitigating factors will not necessarily lead to a reduction in the penalty imposed if the circumstances of the violations found by the Hearing Officer are such that they do not warrant a reduction in penalty.

J. What Sanctions Should be Imposed

The sanction to impose in this matter relates to the violation of state law by a liquor licensee: the serving of alcohol to minors. It does not relate to the consequences of the tragic accident that happened after the patrons left the Respondent. No one disputes the awful nature of the accident and the devastating effect it had on Gershkoff's family or his friends. However, this matter is not an issue of disorderly conduct where the Department may infer that a licensee is directly or indirectly responsible for actions arising from disorderly conduct arising inside.

Unlike the disorderly conduct statutory and case law, the statute and case law has not charged local licensing authorities or the Department when either of them are imposing sanctions for violations of conditions of licensing or of the law to determine whether a violation of law or condition of licensing *actually* led to bad consequences.[13] Thus, neither the local authority nor the Department will determine whether an overcapacity violation led to a fight or whether a smoking violation led to something else. Rather the issue is whether a state law or condition of licensing was violated by the licensee. Of course, the reason for the statutory prohibition informs the nature of the violation of the state law. For example, as noted in *In Re: Dave's on Thames*, LCA-NE-96-25 (1/9/97), overcrowding violations are serious and the consequences of lax enforcement in that area can be nothing short of catastrophic.[14]

To impose the sanction on the basis of the DUI Death Resulting rather than the violation of state law - the underage drinking - would change the nuanced and balanced liquor licensing

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[13] Thus, for example, the Department relied on *Chapman Street Realty* to argue causation regarding the drinking and the accident. However, that case spoke of causation in the context of the disorderly conduct provisions and upheld the Department's determination that the shooting of a police officer outside of the licensee had a direct causal relationship with events inside the licensee's premises.

[14] In that matter, the liquor licensee had an underage violation and then a few months later had an overcapacity violation. The licensee argued that the two (2) violations were unrelated. The Department found that they were related in that they both showed mismanagement by the licensee in a short time period especially in terms of the serious violation of overcapacity so imposed a one (1) day suspension and administrative penalty of $1,000 for the latter overcapacity violation.

statute and case law. A fight inside a liquor licensee's establishment resulting in a murder where the licensee's owner left the premises and did not call the police despite patrons telling him of the shooting fell under the disorderly conduct case law and were egregious actions justifying revocation. See *Cardio Enterprises*. That type of analysis does not apply to the violations of law or conditions of licensing violations. However, in terms of violations of the law or conditions of licensing, the type of violations may mandate suspensions due to the seriousness of the type of violations. E.g. underage drinking or overcapacity. But the issue for revocation of those kind of violations are when the license fails to abide by the law despite progressive discipline. In other words, when the licensee continues to disregard the law such as in *Pakse*, *Eagle I*, *Eagle II*, and *Dacosta*, revocation is justified. The consequences of a violation of state law by a liquor licensee may be handled in other venues. In this matter, the parties agreed that Thole pled *nolo contendere* to DUI Death Resulting. There was testimony that the bartenders involved in serving Gershkoff and his friends were arrested. The parties referred to a civil case filed by the decedent's estate against the Respondent regarding liability for the accident which presumably addressed all the various issues (including drinking) that could have caused the accident.

By adding the allegations of underage violations prior to November 22, 2013, the Department seeks to show a pattern of behavior. However, with the evidence prior to November 22, 2103 relying on estimates from witnesses about themselves and others patrons, it cannot be conclusively determined the exact number of underage violations before November 22, 2013. Rather as discussed above, Barnum, Alexander, Gershkoff, Thole, and Browning all had an opportunity prior to November 22, 2013 to drink at the Respondent.

The sale of alcohol to underage patrons is a violation of R.I. Gen. Laws § 3-8-1 by the Respondent. The Respondent's violation of R.I. Gen. Laws § 3-8-1 is a violation by the

Respondent of R.I. Gen. Laws § 3-5-21 (violation of conditions of licensing). R.I. Gen. Laws § 3-8-10 and R.I. Gen. Laws § 3-8-6 are statutory violations by the underage patrons in possession of alcohol. Thus, the Respondent itself did not violate those two (2) laws, but by having patrons in violation of those laws on its premises it allowed violations of the law which is a violation of R.I. Gen. Laws § 3-5-23(b). The Respondent had no licensing violations in over 15 years, but underage violations are serious violations and the Department has found that a first time violation can merit a suspension with the length depending on the seriousness of the violation. *Infra.*

For those underage violations, the Respondent's License shall be suspended for ten (10) days. In addition, an administrative penalty of $2,500 ($500 for each patron's violation) is imposed pursuant to R.I. Gen. Laws § 3-5-21(b).

On November 22, 2013, there were four (4) violations of R.I. Gen. Laws § 3-8-1 by the Respondent. The Respondent's violation of R.I. Gen. Laws § 3-8-1 is a violation by the Respondent of R.I. Gen. Laws § 3-5-21 (violation of conditions of licensing). By allowing violations of R.I. Gen. Laws § 3-8-10 and R.I. Gen. Laws § 3-8-6, the Respondent violated of R.I. Gen. Laws § 3-5-23(b). It should be noted that the Respondent had no history of violations until the Department brought the action related to the events of November 22, 2013 and then amended the Order to Show Cause to include other underage drinking by the same group of friends. After November 22, 2013, the Respondent purchased an ID scanner, re-trained its staff, changed its ID protocols, and changed its shift schedules in an attempt to prevent a recurrence of underage violations. However, it has been established that there had been underage violations prior to November 22, 2013 so that a more severe penalty is merited for the November 22, 2013 violations.

For the November 22, 2013 underage violations, the Respondent's License shall be suspended for 21 days. In addition, an administrative penalty of $4,000 ($1,000 for each patron's

violation) is imposed pursuant to R.I. Gen. Laws § 3-5-21(b). Finally, the Respondent shall continue to use an ID scanner to verify patrons' ID's.

VI. FINDINGS OF FACT

1. On or about April 24, 2014, an Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer was issued to the Respondent by the Department. The Order to Show Cause was amended by the Department by order dated September 26, 2015.

2. A hearing was held on January 12 and 14, 2016 with oral closings on April 4, 2016. Written closings were filed by April 11, 2016. The parties were represented by counsel.

3. The Respondent holds a Class BV liquor license.

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. § 3-1-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. The Respondent violated R.I. Gen. Laws § 3-5-21 and R.I. Gen. Laws § 3-5-23.

VIII. RECOMMENDATION

Based on the forgoing, pursuant to the R.I. Gen. Laws § 3-5-21 and R.I. Gen. Laws § 3-5-23, the undersigned recommends that the Respondent's License shall be suspended for 31 days commencing on the 31st day following the execution of this decision. In addition, the Respondent shall pay an administrative penalty of $6,500. Finally, the Respondent shall continue to use its ID scanner.

Dated: MAY 24, 2016

Catherine R. Warren, Esquire
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: 6/1/16

Macky McCleary
Director

NOTICE OF APPELLATE RIGHTS

THIS ORDER 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 that on this 2nd day of ~~May~~ June, 2016, that a copy of the within decision was sent by first class mail, postage prepaid and electronic delivery to David Revens, Esquire, and Angelo Simone, Esquire, Revens, Revens & St. Pierre, P.C., 946 Centerville Road, Warwick, R.I. 02886 and by electronic delivery to Jenna Algee, Esquire, and Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue. Cranston, R.I.