

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

_____	:	
Davinci Lounge and Restaurant Inc.,	:	
Appellant,	:	
	:	DBR No. 18LQ0012
v.	:	
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	
_____	:	

DECISION

I. INTRODUCTION

On or about June 7, 2018, the Providence Board of Licenses (“Board”) imposed administrative penalties on the Class BVX liquor licenses¹ of Davinci Lounge and Restaurant (“Appellant”). Pursuant to R.I. Gen. Laws § 3-5-21,² the Appellant appealed the Board’s decision to the Director of the Department of Business Regulation (“Department”). The undersigned was designated by the Director of the Department to hear the appeal. A hearing was held on July 3, 2018. Both parties were represented by counsel who made oral arguments and rested on the record.³

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

¹ There are actual two (2) liquor licensees that filed the appeal; though, the caption refers to one (1) appellant. There is a cigar bar licensee and a restaurant licensee which are located in the same building, one upstairs and one downstairs. The two (2) separate licensees will be discussed later in the decision.

² See case law discussion below.

³ The undersigned received the transcript of hearing on July 13, 2018.

III. ISSUES

Whether to uphold the Board's administrative penalties.

IV. MATERIAL FACTS AND TESTIMONY

At the Board hearing, Detective Kramer and Detective Shields, Providence Police Department ("PPD") testified on behalf of the City. They both testified that on October 21, 2017, they were at the Appellant's and observed bottle service taking place. At the Department hearing, the Appellant admitted to the bottle service violation.⁴

At the Board hearing, Officer Troy Lambert ("Lambert"), PPD, testified that on February 10, 2017, he responded to a call about a disturbance at around 2:00 a.m. and there were about five (5) or ten (10) people fighting in the parking lot adjacent to the Appellant and next to Caserta Pizza. He testified that Caserta Pizza was not open. He testified that he patrols that area a few times per month and the Appellant's patrons and other people use the parking lot. He testified that he saw people walking from the Appellant to the parking lot and they were arguing and yelling and started fighting, pulling clothing, and throwing punches. On cross-examination, he testified that this disturbance was outside and he took immediate action to disperse it.

Lambert also testified that on March 10, 2018, he responded to a call at closing time about disturbance in the alley right next to the Appellant's front. He testified that when he arrived people were fighting and getting thrown to the ground. He testified that people were outside waiting for their cars from the valet to leave. He testified that Caserta Pizza was closed. He testified that Café Pazzo closed at the same time as the Appellant, but does not have a valet license. On cross-examination, he testified that there was a crowd watching the fighting while waiting for their vehicles. He testified that he did not know if they came out of Café Pazzo. On redirect, he testified

⁴ See Department transcript of July 3, 2018 hearing at p. 6.

that the people involved in the fight got into the car that was pulled up by the valet and the Appellant was only one with a valet license in that location.

Officer Brittany Boudreau, PPD, testified on behalf of the City. She testified that on April 17, 2018 she responded to a call of people fight at the Appellant. She testified that she saw drunk people – college aged - coming out of the Appellant and they tried to go next door to Café Pazzo which was closed and did not want to let them in so the crowd banged on the window. She testified that the people were drunk and did not seem to really know what was going on. She testified that 20 minutes later she was called back to Caserta's Pizza and there was a group of drunk people in there who had thrown up inside. She testified that they moved the people outside and the people said they had been at the Appellant. See City's Exhibit One (1) (police report indicated that drunk patrons said they came from a college night at the Appellant).

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). 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. Therefore, this appeal is not bound by the Board's reasons for discipline but whether the Board presented its case for discipline before the undersigned. The undersigned will make her findings on the basis of the evidence before her and determine whether that evidence justifies said discipline.⁵

Most appeals to the Department are made pursuant to R.I. Gen. Laws § 3-7-21,⁶ but pursuant to R.I. Gen. Laws § 3-7-21, the Department does not have authority to hear appeals of fines. However,

⁵ The Department reviews sanctions to ensure statewide consistency and appropriateness in the situation. It also supports progressive discipline barring the rare and extreme event where revocation may be warranted without prior discipline. It also accepts the principles of comity and deference to the local authorities and their desire to have control over their own town or city. At the same time, pursuant to R.I. Gen. Laws § 3-2-2 and R.I. Gen. Laws § 3-7-21, the Department ensures that tensions between local boards and licensees are settled in a consistent manner. Nonetheless, there is not a mechanical application of sanctions as each matter has its own sets of circumstances. See *C&L Lounge, Inc. d/b/a Gabby's Bar and Grille ; Gabriel L. Lopes v. Town of North Providence*, LCA – NP-98-17 (4/30/99). At the same time, a sanction cannot be arbitrary and capricious. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation for a series on infractions). See *Jake and Ella's v. Department of Business Regulation*, 2002 WL 977812 (R.I. Super.) (R.I. Super.) (overturning a revocation of a liquor license as arbitrary and capricious).

⁶ R.I. Gen. Laws § 3-7-21 provides in part as follows:

Appeals from the local boards to director. (a) Upon the application of any petitioner for a license, or of any person authorized to protest against the granting of a license, including those persons granted standing pursuant to § 3-5-19, or upon the application of any licensee whose license has been revoked or suspended by any local board or authority, the director has the right to review the decision of any local board, and after hearing, to confirm or reverse the decision of the local board in whole or in part, and to make any decision or order he or she considers proper, but the application shall be made within ten (10) days after the making of the decision or order sought to be reviewed. Notice of the decision or order shall be given by the local or licensing board to the applicant within twenty-four (24) hours after the making of its decision or order and the decision or order shall not be suspended except by the order of the director.

the Superior Court found that the Department has implied jurisdiction to review administrative fines imposed by local boards pursuant to R.I. Gen. Laws § 3-5-21.⁷ See *The Rack, Inc. d/b/a Smoke v. Providence Board of Licenses*, 2013 WL 3865230 (R.I.Super.). The Court found that the Department does not have to apply a *de novo* standard of review to appeals of administrative fines but that the Department must review the record and articulate and document a substantial, non-arbitrary rationale for invoking its discretion to dismiss appeals of fines imposed by local licensing boards and that the exercise of such discretion must be reasonable. The Court further found that if the monetary fine imposed on a licensee by a local liquor licensing board is within statewide limits set by statute then such a finding by the Department may be sufficient basis for the Department to dismiss a licensee's appeal. *Id.* at pp. 14-17.

C. Disorderly Conduct

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.

⁷ R.I. Gen. Laws § 3-5-21 provides 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:

- (1) Breach by the holder of the license of the conditions on which it was issued; or
- (2) Violation by the holder of the license of any rule or regulation applicable; or

- (4) Breach of any provisions of this chapter;

In revoking or suspending a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. Rather, the Rhode Island Supreme Court held in *Cesaroni* at 295-296 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.

It is to be conceded that this imposes upon a licensee an onerous burden in the management of the licensed premises. It is, however, within the authority of the legislature, the liquor traffic being peculiarly within the police power of the state.

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.

Thus, a liquor licensee has the “responsibility to control the conduct of its patrons both within and without the premises in a manner so that the laws and regulations to which the license is subject will not be violated.” *Schillers, Inc. v. Pastore*, 419 A. 2d 859 (R.I. 1980). In a denial of renewal matter,⁸ *A.J.C. Enterprises v. Pastore*, 473 A.2d 269, 275 (R.I. 1984) found in discussing the disorderly provisions that “[T]here 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.”

⁸ In order to suspend or revoke a liquor license, there must be a showing that the holder has breached some applicable rule or regulation. In this matter, the City is relying on the disorderly provisions of R.I. Gen. Laws § 3-5-23. R.I. Gen. Laws § 3-7-6 requires that a denial of a renewal must be “for cause.” For cause has been interpreted to include (among other reasons) the violations of the disorderly provisions. *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61 (R.I. 1971).

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). As the Supreme Court has found, "the responsibility of a licensee for the conduct of his patrons within the licensed premises that makes it disorderly within the meaning of the statute is established by evidence showing a toleration or acquiescence in such conduct by the licensee." *Cesaroni*, at 296. See also *A.J.C. Enterprises; Schillers*; and *Furtado v. Sarkas*, 118 R.I. 218 (1977).

D. Arguments

The City argued that it has consistently imposed an \$1,000 administrative penalty for a bottle service violation and the other penalties are appropriate for the other violations and the revocation of the valet license is separate from the liquor violations as that related to traffic issues.

The Appellant argued that the City did not prove the disorderly conduct/nuisance allegations and failed to make a link between the Appellant and the activities complained of. The Appellant also argued that the administrative penalties were very high especially in conjunction with the revocation of the valet license.

E. The Violations

The City imposed various administrative penalties on the Appellant, but the penalties for the liquor licenses related to a finding of a bottle service violation of October 21, 2017 and a

finding of three (3) disorderly conduct violations of R.I. Gen. Laws § 3-5-23 on February 10, March 10, and April 17, 2018.⁹

Pursuant to R.I. Gen. Laws § 3-7-26, R.I. Gen. Laws § 3-8-14, and Section 1.4.11 of the Department's *Liquor Control Administration* regulation ("LCA Regulation")¹⁰ bottle service (except for wine and aquardiente) is not allowed. See *City of Providence Bd. of Licenses v. Dep't. of Bus. Regulation*, 2013 R.I. Super. LEXIS 195 (bottle service not allowed). There is no dispute

⁹ The City also found violations and imposed sanctions regarding its own ordinances and the victualing license under R.I. Gen. Laws § 5-24-4. The administrative penalties relating to the liquor violations total \$4,000 (\$1,000 for each violation).

¹⁰ R.I. Gen. Laws § 3-7-26 provides in part as follows:

Certain practices prohibited.

(a) No licensee, employee or agent of any licensee who operates under a license to sell alcoholic beverages shall:

(c) Nothing in this section shall be construed to prohibit a licensee from offering free food or entertainment at any time; or to prohibit licensees from including an alcoholic beverage as part of a meal package; or to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals or to more than one person; or to prohibit free wine tastings. Except as otherwise limited by this section, nothing contained in this section shall limit or may restrict the price which may be charged by any licensee for any size alcoholic beverage to be consumed on the licensed premises.

(d) Adherence to this section is deemed to be a condition attached to the issuance and/or continuation of every license to sell alcoholic beverages for consumption on the licensed premises, and this section shall be enforced by the applicable local licensing authority, its agents, and the department.

(e) The provisions of this section are deemed to be severable and any final decision by a court of competent jurisdiction holding that any provision of this section is void, shall not make void nor affect any of the remaining provisions of this section.

R.I. Gen. Laws § 3-8-14 provides as follows:

Sale of beverages by bottle. The department of business regulation shall adopt rules and regulations authorizing the holders of Class B-V licenses issued pursuant to this title to sell aquardiente by the bottle, for consumption on the premises of the license holder because this beverage is generally purchased by the bottle by ethnic tradition.

Section 1.4.11 of LCA Regulation provides as follows:

Dispensing Alcoholic Beverages – Retail

Except Class B-H alcoholic beverage licensees, all alcoholic beverages must be served, dispensed or sold by an employee or owner of a licensed retail liquor establishment. Alcoholic beverages may not be served or dispensed by a patron, provided however, hotel service "mini bars" shall be permitted if said hotel holds a valid B-H alcoholic beverage license, but said "mini bars" shall only be allowed in the room of a registered hotel guest who is at least twenty one (21) years of age.

that there was a bottle service violation on October 21, 2017. Based on the foregoing, the Appellant violated R.I. Gen. Laws § 3-7-26 and Section 1.4.11 of the LCA Regulation.

For February 10, 2018, the evidence was that people exited from the Appellant arguing and yelling and starting to fight. As the patrons exited from the Appellant arguing and yelling, it can be reasonably inferred that something happened within that caused the arguing and yelling that then escalated outside. Thus, the Appellant was responsible for the disorderly conduct outside.

For March 10, 2018, the evidence was that the Appellant and Café Pazzo closed at the same time. There was evidence that people waiting for their cars outside watched people fighting. There was evidence that people involved in fighting got into a valeted car so most likely had been inside the Appellant (since Café Pazzo does not have a valet license). However, there was no evidence that the fighting outside had its origins inside the Appellant or that there was any incident inside that spilled out of the Appellant and escalated. The fighting could have started outside **or** at another location and the Appellant's patrons who were already outside got involved. There was no testimony about anything that happened inside the Appellant that directly or indirectly led to the fighting outside. There was no testimony regarding the patrons when they exited the Appellant. As there was no evidence that the disorderly conduct had its genesis either directly or indirectly inside the Appellant, this finding of disorderly conduct cannot be sustained.

For April 17, 2018, the evidence was that drunk people exited the Appellant and then banged on windows and threw up inside another establishment. Here the evidence was that the patrons got drunk inside and went outside and caused a nuisance by banging on the windows. See *Pasha Lounge, Inc. d/b/a Pasha Hookah Bar v. City of Providence, Board of Licenses*, 15LQ022 (4/4/16) (discussion of nuisance under the disorderly conduct statute). Thus, the Appellant was responsible for the nuisance (disorderly conduct) outside.

F. Prior Sanctions

The cigar bar license¹¹ was subject to a \$2,250 administrative penalty for violations occurring on November 27, 2016, January 12, 2017, and February 4, 2017. These violations were for three (3) counts of entertainment without a license and three (3) counts of sale/possession of alcohol to underage. See City's Exhibit One (1) (certified record).

The restaurant license¹² was subject to a \$1,250 administrative penalty for violations occurring on November 27 and 29, 2016, December 1, 2016, and January 13, 2017. The violations were for three (3) counts of entertainment without a license, three (3) counts of sale of tobacco, and three (3) counts of permitting smoking in a public place. See City's Exhibit One (1) (certified record).

G. What Sanction is Justified

R.I. Gen. Laws § 3-5-21 provides in part as follows:

(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 § 3-5-21 establishes minimum fines for violations. R.I. Gen. Laws § 3-5-21(b) provides that a first offense by a liquor licensee shall not be fined more than \$500 with the fine for each subsequent offense not to exceed \$1,000. Thus, the first offense is for any offense of the liquor licensing law and the subsequent offense is for any subsequent offense of the liquor licensing laws rather than pinpointing whether the violation is the first or subsequent offense of a specific statutory or regulatory violation.

¹¹ According to the City's licensing history, the name of the cigar bar is Davinci Cigar Inc. d/b/a Davinci Cigar. See City's Exhibit One (1).

¹² According to the City's licensing history, the name of the restaurant is Davinci Lounge & Restaurant Inc. d/b/a Davinci Lounge & Restaurant. See City's Exhibit One (1).

In this situation, both licenses already had first offenses on November 27, 2016 as well as other subsequent violations. Therefore, these violations are second offenses (or more) within three (3) years of the first offense so can be subject to up to a \$1,000 administrative penalty.

Pursuant to *The Rack*, the Department reviews an administrative penalty in order to determine whether a monetary fine imposed on a licensee by a local liquor licensing board is within statewide limits set by statute. If the penalty is within such limits, the Department may dismiss a licensee's appeal. In this matter, the \$1,000 penalty is within the statewide limit for each violation so the appeal should be dismissed except for that the March 10, 2018 allegation which was not proved.¹³ Therefore, the administrative penalty is reduced to \$3,000 (\$1,000 for each violation which is within the statewide limit).

VI. FINDINGS OF FACT

1. On or about June 7, 2018, the Board imposed an administrative penalty of \$4,000 on the liquor licenses held by the appellants (but referred to as the Appellant) (\$1,000 for bottle service and \$1,000 each for three (3) disorderly conduct counts).
2. Pursuant to R.I. Gen. Laws § 3-5-21, the Appellant appealed the Board's decision to the Department.
3. A *de novo* hearing was held on July 3, 2018 before the undersigned sitting as a designee of the Director.
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:

¹³ The issue of the revocation of the valet license relates to the valet license and not sanctions for liquor violations.


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

2. The allegation for March 10, 2018 was not supported by the evidence, but the evidence supported a finding for the other three (3) violations.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the June 7, 2018 decision of the Board shall be upheld for three (3) violations (October 21, 2017 bottle service and disorderly conduct on February 10 and April 17, 2018), but not for the March 10, 2018 allegation. Thus, the administrative penalties shall be reduced to \$3,000 for three (3) violations (two (2) disorderly conduct; one (1) bottle service).¹⁴

Dated: August 6, 2017

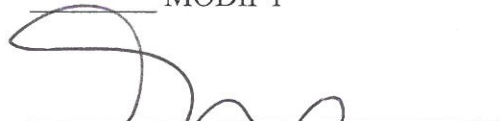

Catherine R. Warren
Hearing Officer

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: 8/8/18


Elizabeth Tanner, Esquire
Director

¹⁴ No stay was granted for this appeal so that the administrative penalties should have been already been paid to the Board, but if they have not been paid, they are due by the 31st day after the execution of this decision.

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 8 day of August, 2018 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, 1511 Pontiac Avenue, Bldg. 68-69, Cranston, RI 02920.

