

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

---

<b>Ocean State Hospitality, Inc. d/b/a Fatt Squirrel,</b>	:	
<b>Appellant,</b>	:	
	:	
v.	:	<b>DBR No.: 16LQ002</b>
	:	
<b>City of Providence, Board of Licenses,</b>	:	
<b>Appellee.</b>	:	

---

**DECISION**

**I. INTRODUCTION**

This matter arose from a motion for stay filed by Ocean State Hospitality, Inc. d/b/a Fatt Squirrel (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding an action taken by the City of Providence, Board of Licenses (“Board”) on February 4, 2016 to continue the closure of the Appellant’s Class BVX liquor license (“License”) until a hearing on February 10, 2016. After a hearing on February 5, 2016, the Department issued an order maintaining the Appellant’s closure until the February 10, 2016 hearing before the Board at which time the Board was to consider a resolution to this matter or failing that, to consider whether a stay could be granted. The matter was scheduled for a further stay hearing on February 11, 2016 if there was no resolution and/or agreed stay. The Department further ordered that it would take jurisdiction of the full hearing in this matter if no resolution was reached. No resolution was reached at the Board’s hearing on February 10, 2016 at which time, the Board ordered the Appellant to stay closed pending the hearing before the Department. Thus, a further stay hearing was held on February 11, 2016. The Department issued a conditional stay

of the Appellant's closure on February 12, 2016<sup>1</sup> with further modifications of the stay order issued on February 19 and March 8, 2016. A hearing was held on February 16 and 17, 2016 with oral closings on February 26, 2016.<sup>2</sup> The parties were represented by counsel.

## II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-2, 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.*

## III. ISSUES

Whether there was disorderly conduct pursuant to R.I. Gen. Laws § 3-5-23 at the Appellant's on January 10 and/or January 30, 2016 and if so, what sanction(s) should be imposed.

## IV. MATERIAL FACTS AND TESTIMONY

Alexis Prince ("Prince") testified on behalf of the City. She testified that on January 9, 2016 at about 11:30 p.m., she went with a friend to the Appellant's and spoke with a woman who was with another group of women, and that woman's friend then was mad at her friend for talking to her (Prince). She testified that this other woman lunged at her (Prince), took a swing, shoved her, and then her three (3) friends came over and started hitting her (Prince). She testified that the fight took about 30 seconds. She testified that she slipped and fell, and a security guard helped her up and escorted her outside to the side of the building, and security also brought the other group outside and the other woman ran toward her, started fighting, others jumped in, and a man punched her in the face. She testified that during the fight outside, they moved into the street. She testified that she did not see security, but after she was punched, the bouncer broke it up. She testified that when her friend came outside, they went to the car and drove by the club where that

---

<sup>1</sup> The conditional stay re-opened the Appellant. It had been closed for 11 days prior to the stay being issued.

<sup>2</sup> The transcripts were received on March 8, 2016.

group threw things at the car. She testified that the bouncer did not ask her about calling rescue or the police, but her nose started bleeding when she was inside, and one of the bouncers asked her outside if she was “ok.” She testified that she later went to the hospital where it was determined that she had a slight concussion, minor damage to her cornea, and a swollen lip. She testified that the hospital called the police for her. On cross-examination, Prince testified that inside, she was yelled at and she yelled back and when she was pushed, she pushed back. She testified that she had tried to deflect the woman, but got lunged at. She testified that she did not see security during the fight outside but was not looking for him.

Dennis Santos (“Santos”) testified on behalf of the City. He testified that he is a licensed hot dog vendor and uses the location of Elbow Street and Chestnut Street and can see the Appellant from his location. He marked on Joint Exhibit One (1) (map) where he was standing. He testified that on January 30, 2016, he heard a ruckus on the street, and saw many people exiting from the Appellant. He testified that about 40 to 50 people came out, and then that increased to around 200 to 300 people.<sup>3</sup> He testified that the crowd was very loud and people were pushing and shoving and the crowd came down the street toward his stand and made its way to the parking lot.<sup>4</sup> He testified that he saw someone being viciously beat in the parking lot. He testified that he hid behind a car and saw his friend on the street and pulled him behind the car and they hid. He testified that he did not see anyone exiting the Art Bar and did not think he saw anyone from Mirabar. See Joint Exhibit One (1) (map marking those two (2) establishments which are near that intersection of Chestnut Street and Elbow Street). He testified that that through the window of the car, he saw an arm with a gun that fired twice in the air, and then fired into the Appellant’s building. He marked where he saw an arm holding a handgun on Elbow Street. See Joint Exhibit One (1) (the “St” on

---

<sup>3</sup> At the Board hearing, he testified it was 100 to 200 people. See City’s Exhibit Five (5) (Board hearing transcript).

<sup>4</sup> Not the parking lot across from the Appellant but the one further down the street toward the witness.

Elbow Street). He testified that there were many people in the street and when the gun was fired, people scattered and left. He testified that he saw the flare from the gun. On cross-examination, Santos testified that the street was empty before the crowd came out. He testified that his friend came from Alibi's which is further away from the Appellant. He testified that he could not tell what people were talking about when they exited the Appellant. He testified that some people could have been leaving the Art Bar, Mirabar, Alibi's, or Ultra.

Patrol Officer Ralph Abenante, IV,<sup>5</sup> testified on behalf of the City. He testified that on January 30, 2016 at about 1:25 a.m., he was in his patrol car in the back of the parking lot at 233 Richmond Street. He marked his location with a blue "x" on Joint Exhibit Two (2) (map). He testified that he could see Chestnut Street and he heard gunshots and saw the muzzle flare. He testified that he drove to Chestnut Street and saw somebody running, and his partner chased that person. He testified that seven (7) shell casings were found at 161 Chestnut Street.<sup>6</sup> He testified that he spoke to the Appellant's owner who said there was a disturbance inside which spilled onto Chestnut Street. He testified that he was on scene about 30 seconds after he heard the gun. On cross-examination, he testified that the shooter has not been apprehended. He testified that if someone had called the police after the shots, it would not have made them arrive any sooner.

Patrol Officer Thomas Richards, Jr., testified on behalf of the City. He testified that he was with Abenante that night and heard the gunshots. He testified that he gave chase to the individual who was bleeding and running from Chestnut Street and the victim told him that he was outside the Appellant's when he was hit. He testified that he called rescue and was told it looked as if the victim had a broken jaw. He testified that the victim said he had been in the Appellant's, but

---

<sup>5</sup> All police officers that testified are members of the Providence Police Department.

<sup>6</sup> He testified that this is consistent with what Santos testified to about the gun shots. The Appellant is located at 150 Chestnut Street.

received the injury when outside. On cross-examination, he testified that if the police had been called after the gun went off there would not have been a quicker response. On redirect, he testified that if 911 had been called, they may have gotten more information about the situation.

Arthur Salisbury testified on behalf of the City. He testified that he lives at 116 Chestnut Street. He put an "x" where his condominium is between Chestnut Street and Ship Street on Joint Exhibit One (1). He testified that he can see the Appellant from his windows and he was just getting into bed on January 30, 2016 when he heard the shots. He testified that he looked out the window and the police were there very quickly and the next day, he walked around the area and saw the broken glass in front of and broken windows above the Appellant. See City's Exhibit Two (2) (photographs). He testified that previously there had not been broken glass or windows there. On cross-examination, he testified that the shots caused him to go to the window. He testified that they have called the police about 50 times about the Appellant, but only once has it been brought before the Board. He testified he would like the Appellant to be closed or corrected.

Captain Oscar Perez testified on behalf of the City. He put a mark on Joint Exhibit Two (2) indicating where he was near Pine Street and Chestnut Street driving towards the Appellant in the early morning of January 30, 2016. He testified that as he came down the street, he saw a large crowd outside of about 50 to 60 people in the middle of the street. He testified that he heard gunshots and saw people running. He testified that the crowd on the street was unusual because it was about 30 minutes before closing and it was larger than one would expect at that time. He testified that seven (7) shell casings were found. On cross-examination, he testified that he could not hear what the crowd was saying. He testified that it was possible that the crowd and gunshots were not connected but based on his experience, many times such occurrences are related.

Detective Patrick Creamer (“Creamer”) testified on behalf of the City. He testified as to the video from inside the club on January 30, 2016 (video three).<sup>7</sup> On cross-examination, he testified that something transpired that cause the majority of patrons to leave, but no punches were thrown. He testified that the only egress is near the ATM on the video and about 40 people left. On further direct, Creamer testified that the outside video (video one)<sup>8</sup> looks directly across from the Club to the parking lot, and that as people exited, they seemed to be looking to the right off-screen and then some walk to the right off-screen and then some go the left. He testified that people in front of the Appellant on the sidewalk would not be visible on camera. On cross-examination he testified that there is no altercation outside on the video, just the staff dispersing the crowd. He testified that in order to walk toward Santos, people would need to go to the left, so most of them would be on the video, unless they were on the sidewalk in front of the Appellant.

Gareth Wilson (“Wilson”) testified on behalf of the Appellant. He testified that he works for North East Security Solutions which provides security to the Appellant. He testified that on January 10, 2016, he was inside and saw that there had been some kind of disturbance and a woman (Prince) was on the floor. He testified that he did not see the fight, but he knew that Prince had been in “the altercation.” Tr. 2/17/16 at 42.<sup>9</sup> He testified that he helped Prince up and took her outside to the side of the building. He testified that she said she was waiting for a friend, and when her friend came outside, he asked her if she needed help and she said no. He testified that the group of aggressors were also outside and tried to come after Prince again but were kept away. He testified that he and another security staff member walked her and her friend to their car, and then he went back to the club where the group of women were still outside. He testified that Prince and

---

<sup>7</sup> It was agreed that the time on the inside video is approximately 47 minutes and seven (7) seconds slow.

<sup>8</sup> It was agreed that the time on the outside video is approximately 1 hour and 18 minutes fast.

<sup>9</sup> “Tr” refers to the transcript of the hearing with the date of the hearing and the page number.

her friend drove by the club, and the group of women tried to throw things at the car. He testified that there was no punching or fighting outside the club, and that he was with Prince the entire time after he helped her up. On cross-examination, he testified that for the inside disturbance, he did not see the fight but knew there was a disturbance from the crowd separating. He testified that he saw Prince on the ground and helped her up, and once they got outside, he saw she was bleeding so he asked her if she was "ok." He testified that when they were outside, two (2) women from the other group tried to run after them, but were stopped when he held out his arms.

Wayne Fantasia ("Fantasia") testified on behalf of the Appellant. He testified that he owns North East Security Solutions which provides security to nightclubs, festivals, and residences. He testified that his employees receive the requisite floor host certification training from Providence as well as his company's mandatory training in terms of physical and record keeping type of duties. He testified that for floor hosts, the threshold is that if bouncers see a crime, they need to call authorities. He testified that his company's standard is if the bouncers feel they cannot control the situation, they call the police. He testified that in dispersing a crowd, one would usually not need the police, unless there was a fight. He testified that nothing seen on the videos showed a crime or indicated a need to call the police. He testified that he put together a report for January 30, 2016 based on his staff members' reports which showed there was an altercation between 1:12 and 1:14 a.m. which was dispersed and patrons exited when people were being removed. He testified that there was a group outside and inside and there was a verbal fight. He testified that there were about six (6) to seven (7) minutes between the verbal altercation and groups dispersing outside, but then within one (1) minute of that outside there was the shooting. On cross-examination, he testified that if a security staff witnesses a crime or knows of a crime, the police are called. He testified that in viewing the outside video, it was mostly posturing and rubbernecking. He testified

people used to leave after disturbances, but now they hang around and try to take videos on their phones. He testified that based on the report, there were two (2) music groups performing and one started arguing, so one group was taken outside and the fans followed.

Wilson further testified regarding January 30, 2016. He testified that he was stationed inside and saw two (2) men arguing near the stage and one man had knocked the other man's camera down. He testified that the man who knocked the camera down was very verbal and would not de-escalate the situation, so he took that man outside. He testified that when he walked out with the man, other people followed him. He testified that the stage cannot be seen on the inside video. He testified that no punches were thrown inside and it was verbal altercation. He testified that when he took the man outside, about 15 to 20 people came outside. He testified that some people were outside talking and some left and he tried to move them along. He testified that if there had been a fight to the right of the door (off-video), he would have seen it. He testified that there was no physical fighting outside, but verbal and pushing and shoving. He testified that based on the crowd, there was no reason to call the police until the gun went off. On cross-examination, Wilson testified that there was no pushing and shoving but jawing back and forth. He testified that on the video, there was some pushing and shoving, but no punches thrown and some people were just waiting to see what happened. He testified that he did not see anything, and at one point he did walk up near the parking lot to the left off-camera. He testified that no punches were thrown inside and other security were inside with that group.<sup>10</sup>

---

<sup>10</sup> Robert Tomasso, Appellant's owner, testified on the Appellant's behalf. He testified that the front door cannot be seen from the side of the building where Prince was taken after she was escorted outside. However, Prince testified that she was in the middle of the street during the fight when saw her friend at the door. Tr. 2/16/16 at 25-26.



## 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. **Arguments**

The City argued that these two (2) incidents show a pattern of behavior of escalation with the police not being notified. The City argued that the Appellant should have called the police after Prince was assaulted. The City argued that on January 30, there was some type of disturbance that caused the majority of patrons to exit at the same time and while Santos most likely overestimated the crowd, he saw the patrons exiting from the Appellant and it is clear he saw a large group of people having a physical altercation and someone being beaten in the parking lot; though, that cannot be seen on the video. The City argued that there was time to call the police

between the patrons exiting and the gun shots and that after the patrons exited pushing and shoving, it escalated to someone firing gun shots. The City requested revocation of License.

The Appellant argued that the January 10 incident was a non-issue as Wilson was more believable than Prince and Prince could have been injured when she fell. The Appellant argued that for January 30, in hindsight, obviously if someone knew that someone was going to shoot a gun, the police would have been called. The Appellant argued that there are 13 views on video inside the club<sup>11</sup> but the only video shown did not show any fighting but rather just showed patrons exiting. The Appellant argued that if one believes Santos' crowd estimate then those people would have had to come from somewhere else besides the Appellant. The Appellant questioned why the victim involved in the street fight was not brought in. The Appellant argued that it has not had any disorderly conduct violations in three (3) years so obviously has been using its best judgment in when to call the police. The Appellant argued that clearly the crowd outside was rubbernecking with some pushing and shoving, but no fighting. The Appellant argued that there is nothing to suggest that what took place inside on January 30 had anything to do with the gunshots. The Appellant argued revocation is not warranted.

In response, the City argued that rubbernecking requires people to be looking at something so something must have been happening and the witnesses for the Appellant are employed by the Appellant, so they would want to keep their reputation with the clubs in order to stay employed and Santos has a financial incentive for the club to stay open. The Appellant then further argued that nobody challenged the way that the crowd was handled after seeing the video.<sup>12</sup>

---

<sup>11</sup> See City's Exhibit Four (4).

<sup>12</sup> The Appellant also argued that recently another liquor licensee, Fete, had a disturbance inside which resulted in someone being shot outside by a patron but only received a 14 day suspension. In contrast, the Appellant argued that in this matter, no one knows whether the shooter was inside the club and nobody got hurt. *Stagebands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.) discussed what needs to be proved to prevail on a claim of selective enforcement. There was no evidence in the record about Fete nor was there any evidence to support a selective enforcement claim (if being made).

### C. The Hearing before the Department

The Department has broad and comprehensive control over the traffic in intoxicating liquors. Indeed, the Department's power of review is so broad that it has been referred to as a "state superlicensing board." *Baginski v. Alcoholic Beverage Comm'n.*, 4 A.2d 265, 267 (R.I. 1939). Because of this broad authority to enforce Title 3, the Department may review matters on appeal pursuant to its authority under R.I. Gen. Laws § 3-2-2<sup>13</sup> rather than R.I. Gen. Laws § 3-7-21. The Department also exercises its authority under R.I. Gen. Laws § 3-2-2 when the matter rises to a level that impacts its broad authority over statewide licensing. For example, the Superior Court in *City of Providence Bd. of Licenses v. State Department of Business Regulation*, 2006 WL 1073419 (R.I. Super.), upheld the Department's authority to hear a matter on appeal pursuant to the Department's *sua sponte* authority under R.I. Gen. Laws § 3-2-2. The Department also has exercised its authority under R.I. Gen. Laws § 3-2-2 to review sanctions to ensure statewide consistency of sanctions. See *Bourbon Street, Inc. d/b/a Senor Froggs/Sully's Sports Bar v. Newport Board of Licenses Commissioners*, 1999 WL 1335011 (R.I. Super.). 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).

---

<sup>13</sup> R.I. Gen. Laws § 3-2-2 provides as follows:

Supervision. – (a) The department has general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting, keeping for sale, and selling beverages.

(b) The department may lease a warehouse for the purpose of efficiently exercising its powers and duties of inspection and may upon reasonable charges store beverages for license holders in the warehouse. No lease shall be for a longer period than five (5) years and every lease shall contain the provision that if it becomes unlawful to manufacture, keep for sale, and to sell beverages in this state it shall become void.

(c) The department has the power at any time to issue, renew, revoke and cancel all manufacturers', wholesalers' and retailers' Class G licenses and permits as are provided for by this title.

(d) The department shall supervise and inspect all licensed places to enforce the provisions of this title and the conditions, rules and regulations which the department establishes and authorizes.

The parties agreed that during the February 4, 2016 Board hearing, local residents gave a packet of letters to each Board member regarding their (unfavorable) opinion of the Appellant and that the Board attorney and the Board administrator were not made aware of these letters prior to their receipt by the Board members. A review of the letters indicate that most of them are not about the actual incidents being heard by the Board, but rather addressed the residents' overall displeasure with the Appellant. As a result of the letters, the Appellant's attorney requested that the Department take jurisdiction of this hearing to which the City's attorney did not object. As stated above, the Department by its February 5, 2016 order took jurisdiction of this hearing if the parties failed to resolve this matter at the February 10, 2016 hearing.

In civil proceedings, unless otherwise specified, the burden of proof generally needed for moving parties to prevail is a fair preponderance of the evidence. *Jackson Furniture Co. v Lieberman*, 14 A.2d 27 (R.I. 1940). See also *Parenti v. McConaghy*, 2006 WL 1314255 (R.I.Super.); and *Manny's Café, Inc. v. Tiverton Board of Commissioners*, LCA TI-97-16 (11/10/97) (Department decision discusses burden of proof for proceedings held pursuant to R.I. Gen. Laws § 3-7-21).

**D. Sanctions Prior to January 10, 2016**

The Appellant has held its License since February 22, 2013. In that time, it has had one (1) violation in September, 2015 for letting in patrons after 1:00 a.m. for which it received a \$250 administrative penalty.

**E. The Violations**

**a. The January 10, 2016 Incident**

For the night of January 9 into January 10, 2016, there were two (2) version of the events. Prince testified that she had an altercation inside and outside. Wilson testified there was a

disturbance inside, but outside, there was no fighting. They both testified that he did ask her if she was “ok.” They both agreed that her nose was bleeding. They both agreed that he had helped her off the floor. Wilson testified that he took her outside and the other group of women tried to run at her, but were prevented. Prince testified that she was hit outside. They both agreed that Prince left with her friend and that when they drove in front of the Appellant, the other group of women threw stuff at the car. Prince testified that she went to the hospital later and that she had a slight concussion, damage to her cornea, and a swollen lip. Despite the differences in testimony, both Wilson and Prince agreed there was an altercation inside the club. There was no dispute that Prince received physical injuries. While Prince may have been injured when she fell to floor, her injuries could not only be as a result of slipping on the floor. She had damage to her cornea and was bleeding from her nose. Her injuries would have occurred from at least also being hit, pushed, or scratched. There is a difference in testimony over how long and where the fight(s) happened, but whether or not Prince was actually hit outside, the aggressors continued to try to fight outside and threw stuff at the car so that an inside disturbance spilled outside and continued outside.

**b. The January 30, 2016 Incident**

On the night of January 29 to 30, 2016, the video inside the club does not show the disturbance in front of the stage as that is off camera to the left. It does show many people – approximately 40 - exiting together at one time. On camera, there are a few people still inside socializing. There is no evidence that there was any physical altercation in the club that night. Wilson’s testimony was that he escorted a patron out who had been arguing and escalating a situation by yelling and when he escorted that patron out, the patron’s friends followed. The video in front of the club does not show what was happening to the right or to the left, but in front of the club, there are groups of people milling around that seem slow to leave; however, some people go

to the parking lot and get into their cars to leave. Wilson is seen on the video trying to move people along. At one point, everyone seems to be looking to the right; though, there was no testimony about what was happening there. Wilson credibly testified that if there were a fight, he would have gone over there. At another point, the group moves to the left of the Appellant.

Santos testified that there were about 200 to 300 people outside. Based on the videos, it is more likely that there were about 40 or 50 people outside as Perez testified. (He testified to 50 to 60 patrons). If anyone was on the sidewalk, they cannot be seen on the video but Santos' testimony was that everyone was in the street coming towards him, and that would be picked up by the cameras. The outside video shows many people in the parking lot opposite the Appellant. The witnesses agreed that there was a large group outside. Perez testified there was obviously some type of disturbance as it was earlier than closing time when the large group of people appeared. From when the patrons exit to the shooting, it is approximately eight (8) minutes. A minute before the shooting there are about three (3) and then four (4) cars lining up to exit the parking lot. Indeed, the front of the club no longer has many people in front of it.

The outside video does not show a physical altercation. Wilson's testimony was there was some punching and shoving and he also testified there was not any punching or shoving. Santos testified there was pushing and shoving. There is no evidence of a physical fight (except for the victim that was hit). Indeed, the video shows people being slow to leave and milling around and apparently wondering if something might happen rather than any actual physical fighting.

Santos testified that he saw a vicious beating in the parking lot off camera. Wilson testified that he went as far as that lot and did not see that. The only victim that was found was somebody that was punched and apparently had his jaw broken. Presumably that is who Santos saw as there were no other reports of injuries from the hospital that would indicate that a person was injured.

The police report<sup>14</sup> stated that the victim told the police that he was injured in the disturbance on Chestnut Street by someone assaulting him from behind. Additionally, down the street to the left coming out of the Appellant, but close enough to hit its building someone fired a gun in the air.

The issue is whether the gunshots and/or the injured man are related to verbal altercation inside the club that spilled outside when many patrons followed the patron being removed or were they separate incidents unrelated to the patrons exiting the Appellant.

In *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ022 (6/24/14), two (2) men were ejected for being drunk and belligerent. When they were outside, a car drove by and the driver fired a gun in the air. The police did not identify a victim or suspects. While the two (2) incidents happened closed together, there was not enough evidence to make a finding that the shooting arose from the disturbance in the club. See *El Tiburon Sports, Inc. v. Providence Board of Licenses*, DBR No. 06-L-0087 (6/1/07) (no link between licensee and an assault down the street from licensee). Unlike *Moe's* where there were two (2) men arguing who were thrown out when the car drove by, in this matter a large group of patrons followed another patron being thrown out and they were fans or friends of the patron. While there are two (2) other licensees nearby, the police testimony was that it was unusual for such a large group to be outside at that time as it was 30 minutes before closing and the evidence was that a large group left the Appellant at the same time and were milling about with some leaving by car. The evidence was that there was not really anyone else on the street prior to patrons leaving the Appellant. The evidence was that the victim was punched on Chestnut Street and the gun was shot near the Appellant and the bullets hit the Appellant's building.

---

<sup>14</sup> See City's Exhibit One (1).

With the large crowd of people exiting the Appellant's, it is reasonable to infer that the shooter was connected to the crowd that spilled out of Appellant and that the victim who had left the club was punched as a result of the mass exit from the club.

Prior to the shooting, the crowd was dispersing within five (5) to six (6) minutes of exiting. Based on the video and testimony, there was no physical altercation inside and there was just one patron who was escorted outside for yelling. Fantasia testified that the floor host's requirements require his bouncers call police if there is a crime or it seems unsafe. It is not hard to conclude that escorting a yelling patron outside is par for the course at night clubs and would not necessarily rise to the level of calling the police. The same is true for the slow to leave patrons. There was no evidence of a crime or a crowd outside out of control. Rather the crowd was dispersing. Indeed, four (4) cars were lining up to exit the parking lot right before the shooting.

Nonetheless from that sluggish crowd, a patron was punched and a gun shot off by an unidentified shooter. The Appellant is responsible for that disorderly conduct as it arose from the patrons that spilled outside after a verbal altercation inside.

#### **F. When Sanctions are Imposed**

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.



In imposing a sanction on 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 v. Smith*, 202 A.2d 292, 295-6 (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.

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, 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). 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 *AJC Enterprises; Schillers*; and *Furtado v. Sarkas*, 118 R.I. 218 (1977).

The Department has a long line of Department cases regarding progressive discipline and upholding the same. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.). The progressive discipline imposed on a licensee depends on the violations and the circumstances of a licensee’s violation(s). 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). The sanctions imposed for R.I. Gen. Laws § 3-5-23 vary depending on the type of disorderly conduct. Very serious and egregious violations that involve weapons and/or serious assaults could result in a revocation of license. E.g. *Cardio Enterprises d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (license revoked for murder that arose at bar).<sup>15</sup> A long suspension may be imposed for severe disorderly conduct. E.g. *C & L Lounge, Inc.* (30 day suspension for severe disorderly conduct but not so severe as to merit revocation).

#### **H. What Sanction is Justified**

From *Cesaroni* in 1964 to *Schillers* in 1980 up until today, a liquor licensee is responsible for activities inside and outside its licensed premises. It does not matter how well a liquor licensee supervises such responsibilities since even the most responsible supervising licensee is still responsible for disorderly conduct. See *Therault*. As discussed above, the sanctions imposed for R.I. Gen. Laws § 3-5-23 vary depending on the type of disorderly conduct.

---

<sup>15</sup> 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 *Stagebands, Inc.* (disturbances and a shooting on one night justified revocation) and *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation of license when had four (4) incidents of underage sales within three (3) years).

In *JJAM Sports, Inc. d/b/a LaCabana Night Club Sports Bar and Grille, Inc. v. Lincoln Board of License Commissioners*, LCA-LI-99-05 (12/27/99), the Department upheld a two (2) day suspension for a fight inside the bar and a second fight outside in the parking lot with the patrons refusing to leave and police (including from the adjoining community) being called to clear the patrons and a police officer had a beer bottle thrown at him. More recently, in *DL Enterprises d/b/a East Bay Tavern v. East Providence City Council*, DBR No. 14LQ009 (4/28/14), the Department reduced a revocation to a 14 day suspension for fighting inside the bar where there was a physical altercation and a stabbing but no positive identification of a weapon. In *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ022 (6/24/14), the licensee received a two (2) day suspension for disorderly conduct when two (2) drunk patrons that had fought inside (but not physically) were escorted outside where they were belligerent but not physical. That licensee had recently had a five (5) day suspension for nuisance and a seven (7) day suspension for various violations such as overcapacity and drinks advertising and a disturbance so that a two (2) day suspension was imposed for the disorderly conduct despite it not being physical. Subsequently, the licensee had its fourth disorderly conduct violation in less than two (2) years when a patron brought a knife inside the premises despite security pat-downs and stabbed another patron. As a result, the Class B license was suspended for 60 days and the Class BX license was revoked. See In *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ054 (12/3/14). In *Curbside, Inc. v. Cumberland Town Council*, DBR No. 09-L-0086 (9/17/09), a two (2) day suspension was imposed on a disturbance where a patron was thrown out after being verbally loud inside and then outside pushed and shoved other patrons.

In this matter, there was a physical altercation in that Prince was slightly injured. While the details of the physical altercation were in dispute (did it happen only inside or continue outside), there

is no dispute that there was disorderly conduct where Prince was injured and the other group of women continued it outside by at least trying to attack her and throwing things at the car. The Appellant is responsible for disorderly conduct inside its premises and for disorderly conduct that is directly or indirectly related to conduct inside. In terms of progressive discipline, in its three (3) years of licensing, it has one (1) violation and not for disorderly conduct. This is the type of violation that could receive either an administrative penalty or a short suspension based on licensing history.

For January 30, 2016, until the gun went off, there was no evidence that indicated that the crowd that went outside after the patron was ejected was doing much more than milling around. This disorderly conduct does not rise to a level of *Moe's*. That case had a stabbing inside the premises after several recent suspensions for disorderly conduct. This matter is more in line with *DL Enterprises*; though, that case involved a physical fight and a stabbing inside the bar with an eight (8) year history of no discipline. Here, there was no physical fighting inside and little physical contact in the crowd outside prior to the victim being punched and an unidentified shooter firing a gun in the air and toward the building.

Based on the forgoing, a 14 day suspension is warranted for the two (2) incidences of disorderly conduct. The Appellant has been closed for 11 days, but also has had reduced hours and closed nights during the pendency of this hearing due to the imposition of a conditional stay. Therefore, the Appellant is deemed to have served its 14 day suspension. In addition, pursuant to R.I. Gen. Laws § 3-5-21(b)<sup>16</sup> an administrative penalty of \$2,000 is imposed for the two (2) disorderly violations. Additionally, certain conditions shall be imposed as set forth below

---

<sup>16</sup> R.I. Gen. Laws § 3-5-21

Revocation or suspension of licenses – Fines for violating conditions of license.

\*\*\*

(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.

## VI. FINDINGS OF FACT

1. On or about February 4, 2016, the Board ordered the Appellant to continue to be closed until its February 10, 2016 hearing.

2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant requested a stay and that the Department take jurisdiction of the hearing.

3. By order dated February 5, 2016, the Department continued the closure to the Board's hearing on February 10, 2016 at which time it was to consider resolution and/or whether to agree to a stay. The Department also ordered that it would take jurisdiction of the hearing if the matter was not resolved. At said hearing, the Board ordered the Appellant to continue to be closed pending the Department's hearing.

4. A further stay hearing was held on February 11, 2016. By order dated February 12, 2016, the Department conditionally stayed the closure. Further conditional stay orders were issued on February 19 and March 8, 2016.

5. A hearing on this matter was held on February 16 and 17, 2016. Oral closings were held on February 26, 2016.

6. 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. § 3-5-1 *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.*

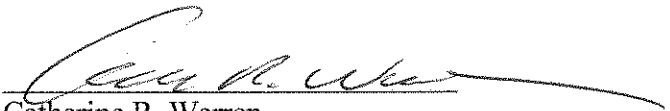
2. Based on the evidence, the violations warrant a suspension of the License for 14 days and imposition of a \$2,000 administrative penalty. Additionally, the Appellant will no longer use the parking lot across the street on any day and on the Monday of each week, the Appellant shall

provide in writing to the Board its security plan for the week. E.g. staffing plans, security company (if any), etc.

**VIII. RECOMMENDATION**

Based on the forgoing, the Hearing Officer recommends a suspension of 14 days which has been served and the imposition of a \$2,000<sup>17</sup> administrative penalty and the conditions set forth above.

Dated: 3/22/16

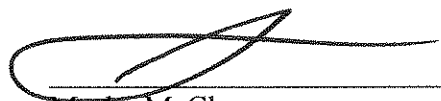
  
Catherine R. Warren  
Hearing Officer

**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 (attached)

Dated: 3/30/16

  
Macky McCleary  
Director

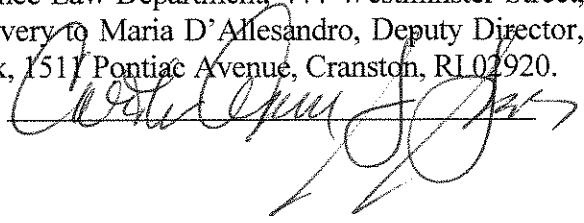
**NOTICE OF APPELLATE RIGHTS**

**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.**

<sup>17</sup> It shall be payable within 30 days of the execution of this decision by the Department Director.

**CERTIFICATION**

I hereby certify on this 30<sup>th</sup> day of March, 2016 that a copy of the within Decision was sent by first class mail, postage prepaid to Stephen M. Litwin, Esquire, One Ship Street, Providence, R.I. 02903 and Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903 and by hand-delivery to Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920.

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

## **DIRECTOR'S MODIFICATION OF RECOMMENDED DECISION**

The Director hereby modifies the recommended Decision as follows:

Subsection V(H) is modified as follows:

The following sentence in the last paragraph on page 20 in Subsection V(H) is deleted: "Therefore, the Appellant is deemed to have served its 14 day suspension." The following sentence is inserted in its place: "Therefore, the Appellant is deemed to have served 11 days of its 14 day suspension."

Section VIII is modified as follows:

The words "which has been served" are deleted. The following is added at the end of the Section. "Eleven (11) days of the fourteen (14) day suspension have been served. The additional three (3) days suspension shall commence thirty (30) days from the signing of this decision<sup>18</sup>."

---

<sup>18</sup> The suspension shall commence in thirty (30) days following the appeal period set forth in R.I. Gen. Laws § 42-35-15.