

III. ISSUES

Whether the Appellant was in violation of R.I. Gen. Laws § 3-5-23 on November 25, 2016 and if so, what sanction(s) should be imposed.

IV. MATERIAL FACTS AND TESTIMONY

The parties relied on the Board's record regarding the November 25, 2016 incidence.

Before the Board, Officer Michael Luke ("Luke"), Providence Police Department ("PPD"), testified on behalf of the City. He testified that he responded to the Appellant's location on November 25, 2016 in response to a reported stabbing. He testified that he learned that there had been an altercation there inside and outside. He testified that there were a couple of drops of blood in front of the Appellant's door. He testified that he went to the hospital and located the victim, Christian Guzman ("Guzman"). He testified that Guzman was the bouncer and told him that he had an altercation with a man outside the establishment and pepper sprayed the man who then stabbed him twice in the upper abdomen. On cross-examination, Luke testified that Guzman told him that the assailant was coming towards the front door. He testified that another witness told him that there had been an altercation inside.

Sergeant Scott McGregor, PPD, testified on behalf of the City. He testified that he was on duty the night of November 25, 2016 and responded to a report of the stabbing. He testified that he spoke with the owner and the owner's daughter inside the establishment. He testified that the daughter translated for the owner and he was told that nothing had occurred in the bar. On cross-examination, he testified that he was told that there had not been a disturbance inside, but another witness said that there was a fight by the pool table.

Detective Mathew Pine, PPD, testified on behalf of the City. He testified that he responded on the night in question to a report of a stabbing and later spoke with Guzman at the hospital. He

testified that he learned that the assailant, [Eliu] Figueroa (“Figueroa”)³ was at the hospital so he spoke to him and the assailant admitted that he had an altercation with the bouncer at the Appellant and was pepper sprayed by the bouncer. On cross-examination, he testified that he spoke to the same witness as the other officers who informed them about the fight inside.

Sergeant David Tejada (“Tejada”), PPD, testified on behalf of the City. He testified that he responded to a call on the pertinent night obtained the security video from the establishment. On cross-examination, he testified that he is fluent in Spanish and spoke to the owner who provided him with the video, but she said that nothing happened inside. He also testified at the Board and Department hearing as to the security videos so that testimony will be summarized together.

Tejada testified that the door to the Appellant is on the corner of Chalkstone Avenue and Canton Street and faces the intersection. The first scene on the video that he testified to was from before the stabbing. He testified that Figueroa can be seen behind the pool table and has a beer in his hand and is waiting to play pool. He testified that the Appellant’s video time is about 20 minutes fast so the time stamp at 11:07 p.m. shows Figueroa interrupting someone. He testified that Guzman intervened when Figueroa grabbed the other man’s wrist. He testified that once it is settled, Figueroa exited and reentered. He testified that another camera picked up Figueroa outside. Tejada testified that it does not look like Figueroa was asked to leave, but that he went outside on his own and exited and reentered twice. He testified that Figueroa was outside for about 30 seconds, talked to Guzman outside, and went back in as did Guzman.

Tejada testified that shortly after they re-entered, they both were behind the pool table. He testified that they were talking behind the pool table; though, the ceiling lamp obstructed some of the view of Guzman. He testified that Guzman punched Figueroa, knocked him to the ground,

³ The assailant’s full name was testified to later at the Department hearing.

struck him a few more times, and patrons intervened at 11:21:42 p.m. (20 minutes fast). He testified that on another video taken outside, Figueroa can be seen leaving and then 20 minutes later, he returned and stabbed Guzman, but the stabbing cannot be seen on the video. He testified that Guzman and Figueroa wrestled and Figueroa assaulted Guzman.

On cross-examination, Tejada testified that there was some blood spatter in this area. He testified that Guzman's testimony was that he did not know he was stabbed until someone pointed out that there was blood on his shirt. He testified that a weapon was never found. On questioning from the undersigned, he testified that Figueroa can be seen walking up Canton Street and then 20 minutes later he came back and stabbed Guzman.

Thomas Frazier Ohlgren testified on behalf of the City. He testified that he runs the Allied Response Training and facilitates safety and certification classes in terms of floor host security. He testified that floor hosts have to be licensed so he trains them in terms of escalation, fight indicators, and liabilities. He testified that he has worked as security at a variety of night clubs. He testified that he has reviewed the video in this case. He testified that Guzman took his training in 2013. He testified that the biggest lesson that he tries to get across to security is they need to protect patrons. He testified that in the video of the altercation between Guzman and Figueroa, Figueroa had raised his arm but he was not presenting a threat to Guzman as he did not have a weapon and was not in fighting stance. He testified that in reviewing the video, Guzman's force in response to Figueroa was not warranted. On cross-examination, he testified that there needs to be imminent threat of harm to have a physical reaction and based on the video, it did not seem that Guzman was concerned with what Figueroa was doing in a physical manner.

Guzman testified on behalf of the Appellant. He testified that he is an independent contractor and had worked at the Appellant for eight (8) years. He testified that he was working

the night of November 25 and this was the first time he has been involved in a stabbing. He testified that on that night, Figueroa said he was going to kill him, meaning Guzman and the owner. Guzman testified that he said to Figueroa, "have a drink, go home and relax." He testified that he was trying to calm Figueroa down. He testified that he struck Figueroa because Figueroa struck him first in the face. He testified that when the stabbing occurred, he was at the door and did not realize he was stabbed until later. He testified that he thought Figueroa had punched him in the stomach so he pepper sprayed him and Figueroa left.

On cross-examination, Guzman testified that Figueroa did not threaten Gladys Mercado ("Mercado") (the owner the police spoke to), but a different owner, Mr. Palotta (see below). He testified that Mercado told him to get rid of Figueroa so he said to Figueroa "finish your drink" and that is when he got stupid. He testified that he never told Figueroa that he could not come back in since he was trying to avoid Figueroa getting too riled up. He testified that Figueroa slapped him so he punched him back. He testified that he did not think he needed to call the police because Figueroa had left and when he came back, Figueroa immediately went for him. He testified that the owner saw the altercation behind the pool table.

Mercado testified on behalf of the Appellant. She testified that she is the owner and was there on November 25, 2016 working at the bar. She testified that there was a commotion inside and she didn't know who it was, but Guzman told her about it and she said not to let Figueroa back in. She testified that when she was asked where the stabbing was, she said it was outside. She testified that she told the police that there had been a commotion previously and she had told Guzman not to let Figueroa back in. She testified that she spoke with Tejada in Spanish and the other officer through her daughter interpreting. She testified that she was asked if something

happened inside and she told them there was a disagreement inside. She testified that she has owned the Appellant for eight (8) years and she allowed the police to take the video.

On cross-examination, Mercado testified that Mr. Palotto is her ex-husband and owns the building but not the license. She testified that she was behind the bar and saw a commotion with security, but not who it was. She testified that she told Guzman to get rid of Figueroa, but Guzman tried to keep him calm. She testified that she told the police that there was a quick altercation inside and then they asked where the stabbing happened and she told them it was outside.

Vanessa Rogosta (“Rogosta”) testified on behalf of the Appellant. She testified that she was working as a bartender at the Appellant on November 25, 2016. She testified that she knew that the security guard had a physical fight with a man. She testified that she spoke to one of the police officers later and interpreted for her mother. She testified that she was asked if there was a physical fight and said there had been a small altercation in the bar and that when her mother was asked the same question, her mother gave the same answer. There was no cross-examination.

A review of the videos show that at 11:07 p.m.,⁴ Figueroa was standing near the pool table with a drink in his hand watching the game. At 11:08:33 p.m., he set down his beer and at 11:08:39, he grabbed the arm of a man who looked like he was about to play the next pool game (the man looked like he was taking money out of his wallet). Immediately, Guzman went over to Figueroa and the other man and talked to them. By 11:08:54 p.m., Figueroa was no longer talking to the man and at 11:09:30 p.m. Figueroa went outside (the door is behind the pool table). On another video (channel six (6)), at 11:09:30 p.m., Figueroa was outside and then apparently went back inside a short time later. At 11:19:26 p.m., Guzman went outside and at 11:19:44 p.m., Figueroa

⁴ The time represents the time on the video (channel eight (8)) but the testimony was the video from inside the Appellant was about 20 minutes fast so the time really was closer to 10:50 p.m.

outside. At 11:19:47 p.m., Figueroa talked to Guzman; though Guzman was also on his cell phone. At 11:20:23 p.m., Figueroa went inside and at 11:20:57 p.m., Guzman went inside.

After they come back inside, on the video (channel eight (8)), Guzman and Figueroa were behind the pool table. They are hard to see because there is an overhead lamp in front of them. Figueroa had his back to the camera and apparently was talking to Guzman. At 11:21:43 p.m., Figueroa lifted his left arm. At the next second, Guzman punched Figueroa so that Figueroa fell backward onto the ground. Guzman punched Figueroa again while Figueroa was still on the floor and patrons rushed over to intervene. Guzman tried to kick Figueroa while patrons were breaking up the fight. At 11:22 p.m., Figueroa left (apparently due to crowd moving him to the exit). After Figueroa left, he returned 20 minutes later and stabbed Guzman outside the Appellant.⁵

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

⁵ The City obtained a video from another business that showed the events outside leading up to the stabbing. The video was shown at the hearing and the actual attack could not be seen, but there is no dispute that Figueroa attacked Guzman. The City did not provide a viewable copy of this video to the undersigned. However, as the video was seen at the hearing, the undersigned determined that no further review of that security video was needed to issue a decision in this matter.

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 (R.I. 1998).

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) (as the hearing is a *de novo* hearing rather than an appellate review of what occurred at the municipal level, any alleged error of law or fact committed by the municipal agency is of no consequence). See also *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964); *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964). Thus, while there was not a totally 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 revocation but whether the Board presented its case for revocation before the undersigned. The undersigned will make her findings on the basis of the evidence before her and determine whether that evidence justifies said revocation.

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. The unevenness of the application of a sanction does not render its application unwarranted in law but excessive variance would be evidence that an action was 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).

An appeal proceeding held pursuant to R.I. Gen. Laws § 3-7-21 is considered a civil proceeding. See *Board of License Commissioners of Tiverton v. Pastore*, 463 A.2d 161 (R.I. 1983). See also *Scialo v. Smith*, 210 A.2d 595 (R.I. 1965). 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).

C. Arguments

In closing, the City argued that the Appellant has a long history of violations and while there has been no violence, the history of its violations is extensive with six (6) violations in less than three (3) years. It argued that Appellant has been fined, had its hours cut, and had a three (3) day suspension, but still cannot comply with its statutory requirements. The City relied on *Pakse* to argue that progressive discipline has been shown and the Appellant cannot comply with the statute and regulations so that revocation is appropriate. The City argued that the Board exercised its discretion appropriately and worked with this Appellant, but it that has been ineffective so under *Paske* revocation is appropriate. The City argued that if the revocation is not upheld, the City will

be punished for not imposing suspensions sooner. The City argued that this is a situation where the staff was the instigator and security should have not escalated this incident.

In closing, the Appellant agreed that it is responsible for Guzman but argued revocation was inappropriate and would be arbitrary under *Jake and Ella's* especially in comparing it to sanctions for other licensees. The Appellant argued that other licensees have been allowed to stay open after stabbings, etc. The Appellant argued that it has been working with the Board and retained someone to help it with a system to address its other violations like buying liquor from non-distributors. The Appellant argued that it has been licensed for eight (8) years and this is its first disorderly conduct incident⁶ and the situation was handled that night.

D. Sanctions Prior to November 25, 2016

The License was transferred to the Appellant in June, 2011. Mercado has apparently owned the establishment for eight (8) years. In 2011, it had administrative penalties imposed twice for various violations such as entertainment without a license, violating a consent order, and violating conditions of licensing. In 2012, it had an administrative penalty imposed for having entertainment without a license. In 2013, it was again monetarily penalized for violating terms of agreement and conditions of license. In 2015 and 2016, it had administrative penalties imposed for sale of tobacco without a license and permitting smoking in a public place. In 2016, it had

⁶ At the Board hearing, there was conflicting testimony from the police officers, Mercado, and Rogosta about what was said to the police when they inquired if anything had happened inside. The Board did not make a finding of what the police were told, but just recited the police officers' testimony. The Board made no finding over whether the testimony was credible.

A licensee has the obligation to conduct its business to comply with the law and is responsible for violations of the law even if it had no knowledge of such violations. *Scialo v. Smith*, 210 A.2d 595 (R.I. 1965). If the owner had made a false statement to the police during a criminal investigation, such a statement would violate R.I. Gen. Laws § 3-5-21(b) since it is axiomatic that a condition of licensing would include being honest when questioned by the police during a criminal investigation. *The Vault, LLC v. City of Providence, Board of Licenses*, DBR No. 16-LQ008 (9/14/16).

On appeal, the Board did not pursue the issue over what the police were told by the licenseholder and staff. Since the Board did not pursue any such allegation at the Department hearing, the Department will not make a finding regarding what was said or not and will rest its sanctions solely on the disorderly conduct.

administrative penalties and its License suspended for three (3) days for underage sales and purchasing alcohol from someone other than a licensed distributor.

E. When Revocation of License is Justified

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 revoking 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).

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, 842-3 (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).

Nonetheless, 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, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.) (several 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). See also *Cardio Enterprises, d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (killing of patron with incident starting inside and escalating outside justified revocation); *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); and

Tropics, Inc. d/b/a Club Tropics v. City of Warwick, Board of Public Safety, LCA-WA-97-05 (2/28/97) (series of infractions justified revocation).

Thus, the Department will uphold a revocation where an incident is so egregious as to justify revocation without progressive discipline. However, the Department will decline to uphold a revocation where the violation is not so egregious or extreme and the local authority has not engaged in progressive discipline. *Infra*.

F. November 25, 2016

The first incidence of Figueroa grabbing the other patron's arm was quickly handled by Guzman. However, later Guzman punched Figueroa to the ground and then again and then tried to kick him while patrons were intervening. Guzman testified that Figueroa slapped him. The video showed Figueroa raised his arm, but it is unclear if he actually touched Guzman. But certainly the punch by Guzman after Figueroa was on the ground and trying to kick him once the patrons intervened is uncalled for especially as a bouncer should seek to de-escalate such situations. Indeed, Guzman testified earlier that he had been trying to placate Figueroa when Figueroa had been mouthing off. Figueroa left and returned 20 minutes later and stabbed Guzman. While there is a gap between Figueroa's departure and the stabbing, the stabbing can be linked to the actions inside the bar of Guzman fighting with Figueroa.

G. 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. Very serious and egregious violations that involve weapons and/or serious assaults could result in a revocation of license. E.g. *Cardio Enterprises*. 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). 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 uphold 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 bar where there was allegations of stabbing but no positive identification of a weapon. In *Ocean State Hospitality, Inc. d/b/a Fatt Squirrel v. Providence Board of Licenses*, DBR No.: 16LQ002 (3/31/16), a patron was ejected and a crowd followed the patron outside and milled around with fighting including a shooting (no injuries) and a patron being punched. In that matter, the licensee had an administrative penalty once in the three (3) years it had been open. Its license was suspended for 14 days for the disorderly conduct for the night of the shooting and a scuffle on another night.

In *The Vault, LLC v. City of Providence, Board of Licenses*, DBR No.: 16LQ008 (9/14/16), the patron had been ejected and stayed in the vicinity trying to re-enter before getting a gun from his car and firing across the street slightly injuring a man. In that matter, the licensee in the prior three (3) years had three (3) prior non-disorderly conduct with administrative penalties and a short suspension. In this matter, the staff member was proven to have lied to the investigating police about

the circumstances of the shooting. The licensee's late night license was suspended for 60 days concurrently with a ten (10) day suspension of the BV license. 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 recently had a five (5) day suspension for nuisance and a seven (7) day suspension for various violations 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).

The City implied in its arguments that it should have levied suspensions previously on the Appellant so that it would be set up for progressive discipline for revocation. The purpose of sanctions is to ensure compliance and if the licensee has prior sanctions that often will merit an increase in sanctions and indeed the administrative penalties imposed on the Appellant increased from 2013 and 2016 (as allowed by statute) with a three (3) day suspension imposed in 2016 for a violation that was not disorderly conduct. However, discipline should not be meted out with an eye of what could possibly play well for a speculative future revocation action, but rather be based on the violation.

In the context of a liquor licensing, the Superior Court has found that the purpose of progressive discipline by the local liquor licensing authority is to impose a reasonable sanction that will deter the licensee from repeatedly violating the law and when after the imposition of progressive discipline, the licensee fails to conform with the law, revocation is justified. See

Pakse. 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*. Here, the Appellant has not had any prior disorderly conduct, but has received progressive discipline regarding its various violations. There is no mechanical grid for the application of sanctions; however, sanctions cannot be arbitrary and capricious.

In this matter, there were three (3) different disorderly conduct incidences in one (1) night. The first was the very minor one with Figueroa and another patron near the pool table. The other two (2) incidents were much more serious: the one between Figueroa and Guzman behind pool table and the stabbing outside. Thus, in one night, there were two (2) serious disorderly conduct incidences and one of them was apparently instigated and/or escalated by the Appellant's own security. In addition, the Appellant has several previous violations for non-disorderly conduct.

Based on the forgoing and consistent with progressive discipline and other Department cases, the revocation of the License is reduced to a 30 day suspension to commence on the 31st day after the execution of this decision. A police detail on Friday, Saturday, and holidays was imposed as a condition of the stay. The police detail⁷ shall remain for 30 days subject to a review of the Board after 30 days in order to determine whether the detail should continue. In considering the detail, the Board shall consider the Appellant's security plan that the Department in its stay order ordered the Appellant to submit the Board.

VI. FINDINGS OF FACT

1. On or about December 8, the Board notified the Appellant that its License had been revoked by Providence.
2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision to the Director of the Department.
3. On December 27, 2016, the Department issued a partial stay of the Board's revocation of License.
4. Pursuant to R.I. Gen. Laws § 3-7-21(c), the parties agreed to base the appeal on the record before the Board as well as enter some further evidence.
5. Oral closings were held on January 31, 2017.
6. The facts contained in Section IV and V are reincorporated by reference herein.

⁷ It should be noted that the Appellant is only open to 12 midnight and police details run usually from 10:00 p.m. to 2:00 a.m. The Appellant can either determine if a detail can run from 8:00 p.m. to midnight or if it can obtain a two (2) hour detail or if it has to obtain a 10:00 p.m. to 2:00 a.m. detail. If the only detail that can be obtained is a 10:00 p.m. to 2:00 a.m. detail, the establishment must still close by midnight. If the establishment cannot obtain a detail on a Friday or Saturday or holiday night, it cannot open that night.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

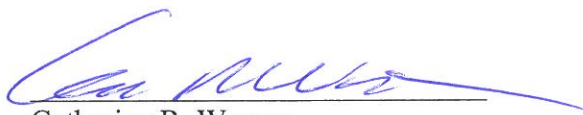
1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. In this *de novo* hearing, the Appellant made a showing that warranted the overturning of the City’s decision to revoke the Appellant’s License so that the revocation is reduced to a 30 day suspension.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the decision of the Board revoking Appellant’s Class BV License be overturned and be reduced to a 30 day suspension that shall commence on the 31st day after the execution of this decision.⁸ In addition, as discussed above, the police detail shall remain subject to a 30 day review by the Board.

Dated: April 26, 2017

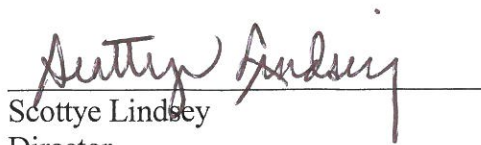

Catherine R. Warren
Hearing Officer

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: 5/11/17


Scottye Lindsey
Director

⁸ The Appellant’s License was revoked on December 8, 2016 and partial stay granted on December 27, 2016 so it has already served 19 days of its suspension. Thus, it needs to serve a further 11 days of this suspension of License.

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 2 day of April, 2017 that a copy of the within Order was sent by email and first class mail, postage prepaid, to the following: Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903 and Richard H. James, Esquire, 696 Reservoir Avenue, Cranston, RI 02910 and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920