STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND

Italo-American Citizens Club of Warren, Appellant,	:	
v.	:	**DBR No.: 21LQ006**
Town of Warren, Board of Licenses, Appellee.	:	

ORDER REGARDING MOTION FOR STAY

The undersigned designee of the Director modifies the Hearing Officer's recommendation and issues this order with respect to the motion for stay filed by Italo-American Citizens Club of Warren ("Appellant").

Sections I – VII and IX and all but the last sentence of Section VIII of the Hearing Officer's recommended order on motion for stay attached hereto are hereby incorporated herein by reference. The last sentence of Section VIII of the recommended order is modified and replaced with the following:

"In addition to limited alcohol service hours, prior to the Appellant beginning to serve alcohol again, the Appellant must provide the Board with its written safety plan, including violence prevention and response procedures, and notify the Board of a contact person responsible for ensuring the plan has been implemented and that the hours for serving alcohol are complied with by the Appellant."

Dated: September 24, 2021

Elizabeth Dwyer, Esq., as designee for
Director of the Department of Business Regulation

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES AN INTERLOCUTORY ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-15. 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 APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 24th day of September, 2021, that a copy of the within Order and Notice of Appellate Rights was sent by email and first class mail, postage prepaid, to the following: Kevin Bristow, Esquire, One Turks Head Place, Suite 950, Providence, RI 02903 kjbristowlaw@verizon.net, and Anthony DeSisto, Esquire, Anthony DeSisto Law Associates, 450 Veterans Memorial Parkway, Suite 103, East Providence, RI 02914, tony@adlawllc.net, and by electronic-delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920 pamela.toro@dbr.ri.gov.

Diane L. Paravisini

STATE OF RHODE ISLAND
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Italo-American Citizens Club of Warren, Appellant,	:	
v.	:	**DBR No.: 21LQ006**
Town of Warren, Board of Licenses, Appellee.	:	

ORDER RE: MOTION FOR STAY

I. INTRODUCTION

This matter arose from a motion for stay filed on September 15, 2021 by Italo-American Citizens Club of Warren ("Appellant") with the Department of Business Regulation ("Department") pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision by the Town of Warren, Board of Licenses ("Town" or "Board") taken on September 14, 2021 to revoke its Class D liquor license ("License"). The Board objected to the Appellant's motion. A hearing on the motion to stay was heard[1] on September 20, 2021 before the undersigned who was delegated to hear this matter by the Director of the Department.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R. I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

[1] Due to the COVID19 pandemic, the stay hearing was heard remotely.

A liquor appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21 is considered a *de novo* hearing. The Department's jurisdiction is *de novo* and the Department independently exercises the licensing function. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964); and *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Because the Department's has such broad and comprehensive control over traffic in intoxicating liquor, its power has been referred to as a "super-licensing board." *Baginski v. Alcoholic Beverage Comm.*, 4 A.2d 265, 267 (R.I. 1939). See also *Board of Police Com'rs v. Reynolds*, 133 A.2d 737 (R.I. 1957). The purpose of this authority is to ensure the uniform and consistent regulation of liquor statewide. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964).

III. STATUTORY BASIS FOR REVOCATION

R.I. Gen. Laws § 5-23-5 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.

IV. DISCUSSION OF CASES ON REVOCATION

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 v. Smith*, 202 A.2d 292, 295-296 (R.I. 1964) as follows:

> [T]he legislature, in enacting the pertinent provision of the statute, intended to impose upon such licensee the obligation to maintain an efficient and affirmative supervision over the conduct of his patrons in his place to such an extent as is necessary to maintain order therein. It is our opinion that as a practical matter a licensee assumes an obligation to affirmatively supervise the conduct of his patrons

so as to preclude the generation therefrom of conditions in the neighborhood of like character to conditions that would result from maintenance of a nuisance therein.

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 v. Pastore*, 473 A.2d 269 (R.I. 1984); *Schillers;* and *Furtado v. Sarkas*, 118 R.I. 218 (1977).

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).

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 *Stagebands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.) (disturbances and a shooting on one night justified revocation). 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).

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.*

V. STANDARD FOR ISSUANCE OF A STAY

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976), a stay will not be issued unless the party seeking the stay makes a "'strong showing'" that "(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest." Despite the ruling in *Harsch*, the Supreme Court in *Department of Corrections v. Rhode Island State Labor Relations Board*, 658 A.2d 509 (R.I. 1995) found that *Harsch* was not necessarily applicable in all agency actions and the Court could maintain the *status quo* in its discretion when reviewing an administrative decision pursuant to R.I. Gen. Laws § 42-35-15(c). The issue before the undersigned is a motion to stay a Decision which is subject to a *de novo* appeal and does not fall under R.I. Gen. Laws § 42-35-15(c). Nonetheless, it is instructive to note that the *Department of Corrections* found it a matter of discretion to hold matters in *status quo* pending review of an agency decision on its merits.

VI. PRIOR DISCIPLINE

The Town represented that the Appellant was established in 1938. It is unclear when it received its License, but the Town represented that the Appellant held its License sometime prior to 1992. The Town represented that the Appellant does not have any recent sanctions on its License.

VII. ARGUMENTS

The Appellant argued that at the Town hearing the police chief testified that there were no problems at the Appellant, it did not allow disorderly conduct, and it exercised supervision. The Appellant argued that it had no guns on its premises. The Appellant argued that this was an unforeseen event and concerned an individual that now is deceased so there is no public safety issue. The Appellant argued that it will suffer irreparable harm if a stay is not granted as it is a small club of about 30 to 35 members with nominal annual fees so it relies on its License for revenue.

The Town argued that the events of September 2, 2021 were a rare and extreme occurrence that merited revocation of the License as there was a homicide inside the Appellant and someone else was seriously injured.[2]

VIII. DISCUSSION

The information received by the undersigned is based on representations of the parties. A transcript was not available; however, audio of the Board's hearing was available online and the undersigned listened to part of the September 14, 2021 hearing.[3] It is noted that some of the testimony at the Town hearing was inaudible.

The parties agreed that the shooter in this matter consumed alcohol on the premises in the morning of September 2, 2021 apparently between 8:00 a.m. and 10:00 a.m.[4] It was represented

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[2] The Appellant raised the issue that the Board may have been biased due to the fact the victim in the shooting was a well-known and well-liked member of the community and the Board paid tribute to the victim prior to the hearing. However, 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). An appeal is not bound by the Board's reasons for revocation but whether the Board presented its case for revocation to the Department.

[3] See https://www.youtube.com/channel/UCfEVQCccrGO03Tm3KtfeJzQ for the Board hearing on September 14, 2021.

[4] The parties agreed that the Appellant was allowed to serve alcohol in the morning under its License.

the shooter left the premises and obtained a gun, and he returned to the Appellant with a gun. It is unclear what time the shooter left the Appellant. It is unclear how long he was gone before returning the Appellant. It is unclear how long he was inside before killing a patron and seriously injuring another patron. It was agreed that the shooting took place inside at approximately 2:30 p.m. on September 2. It was represented that the shooter had words with someone before leaving but who and the extent is not clear.

In *Cardio Enterprises,* an incident started inside and escalated outside and led to the killing of a patron with the licensee failing to call the police which justified revocation. In *The Vault Lounge, LLC v. City of Providence, Board of Licenses*, DBR No.: 16LQ008 (9/14/16), a patron was ejected from a club and then did not leave the area and tried to get back inside so that the club was indirectly responsible for the patron's shooting 18 minutes after the ejection.

The Appellant is responsible for disorderly conduct of its patrons inside or disorderly conduct outside that can be directly or indirectly linked to something that occurred inside. Here, the shooter left the Appellant but for how long and what happened before he left to retrieve his gun is unknown. Additionally, what happened when he returned and shot his victims is unclear. There were no allegations that the Appellant had a security plan in place that it failed to follow.

A. Substantial Likelihood of Success on the Merits

Applying the criteria from *Harsch*, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. Liquor licensees are responsible for conduct that arises within their premises and for conduct that occurs off premises but can be reasonably inferred from the evidence had their origins inside. In revoking a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage

in disorderly conduct. There is no dispute that there was a murder and a serious wounding inside the club on September 2, 2021; however, the complete circumstances are not known.

B. Irreparable Harm to the Appellant; Substantial Harm to Other Interested Parties; Public Interest

The Appellant argued that it will suffer irreparable harm if it is forced to close. However, the Board (an interested party) has an interest in ensuring that liquor licensees – where the public gather - are compliant with their statutory obligations. In addition, there is a strong public protection interest. Not only does the public have an interest in ensuring that public spaces are safe, granting a stay raises issues of public safety and public protection. The Appellant argued that there was not a public safety issue as the shooter was now deceased.

C. Whether to Grant a Stay

The Appellant is a club that is open to its members and guests. It is a not large public venue, but a small social club based on its number of members. Class D licensees must have a kitchen as required for Class B licensees. Section 1.4.9 of *Liquor Control Administration* Regulation, 230-RICR-30-10-1 ("Liquor Regulation") in part as follows:

> 1.4.9 Class D (Club) License - Retail
> A. A Class D alcoholic beverage license may only be issued to a club as defined in R.I. Gen. Laws §§ 3-1-1 and 3-7-11.
> ***
> D. A Class D license holder must comply with kitchen requirements set forth for Class B licenses in § 1.4.5 of this Part.
> ***
> F. A Class D alcoholic beverage license permits the sale of beverages to members of the licensed club and their guests to be consumed solely on the premises.

The circumstances of the killing and serious wounding on September 2, 2021 cannot be determined without a full hearing. Under its Class D license, the Appellant is required to have a kitchen. The undersigned understands that only the Appellant's liquor license has been revoked

so presumably it can otherwise open (as legally allowed) and provide food service and provide food without a liquor license. Nonetheless, in order to maintain the *status quo*, it is recommended that a conditional stay be granted by limiting the hours of liquor service by the Appellant. No alcohol shall be served prior to noon on any day. Alcohol may be served to 8:00 p.m. Obviously, the Appellant may open at any time as allowed by law, but the serving of alcohol will be limited to between noon and 8:00 p.m. While a toxicology report has not been returned for the shooter, the evidence is apparently he was at the club early in the morning drinking. This condition allows the Appellant, a social club, to serve alcohol at meal times as part of its food service rather than just allow drinking at any time. In addition, prior to the Appellant beginning to serve alcohol again, the Appellant must notify the Board of a contact person responsible for ensuring that the hours for serving alcohol are complied with by the Appellant.

IX. RECOMMENDATION

Based on the foregoing, the undersigned recommends that the Appellant's motion for a stay be conditionally granted as outlined above.

Nothing in this order precludes the parties from agreeing to a modification of a stay.

Nothing in this order precludes either party from petitioning the undersigned to revisit this order because of a change in circumstances.

Dated: 9/23/21

Catherine R. Warren
Hearing Officer

INTERIM ORDER

I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

_____ ADOPT
_____ REJECT
__X__ MODIFY

Elizabeth Kelleher Dwyer

Dated: 9/24/2021

Elizabeth Dwyer, Esq., as Designee for
Elizabeth M. Tanner, Esquire
Director

A hearing will be scheduled on a mutually convenient date to be determined by the parties.[5]

NOTICE OF APPELLATE RIGHTS

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CERTIFICATION

I hereby certify on this 24th day of September, 2021 that a copy of the within Order was sent by email and first class mail, postage prepaid, to the following: Kevin Bristow, Esquire, One Turks Head Place, Suite 950, Providence, R.I. 02903 and Anthony DeSisto, Esquire, Town Solicitor, 514 Main Street, Warren, R.I. 02885 and Anthony DeSisto Law Associates, 450 Veterans Memorial Parkway, Suite 103, East Providence, R.I. 02914 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920

Diane L. Paravisini

[5] Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant is responsible for the stenographer.