

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

Seven Providence, LLC d/b/a Seven,	:	
Appellant,	:	
	:	
v.	:	DBR No.: 19LQ022
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	

DIRECTOR’S DECISION AND ORDER

The Director modifies the Hearing Officer’s recommendation and issues this decision and order with respect to the motion for stay filed by Seven Providence, LLC d/b/a Seven (“Appellant”).

Copies of the following documents from the record are attached hereto and incorporated herein by reference: (a) the decision dated July 30, 2019, issued by the City of Providence, Board of Licenses (“Board”) from which the Appellant has appealed (the “Board Decision”), (b) print out of the Appellant’s licensing history for this location dated July 3, 2019 (the “Licensing History”), and (c) copies of the Appellant’s September, 2018 security plan and December, 2018 nuisance mitigation plan.

Sections I – VII of the Hearing Officer’s recommended order on motion for stay attached hereto are hereby incorporated herein by reference. Considering the material public safety issues presented, the dispute as to whether Appellant followed its own security and nuisance plans, and

the bottle service and entertainment violations that Appellant does not dispute, Section VIII of the recommended order is modified as follows:

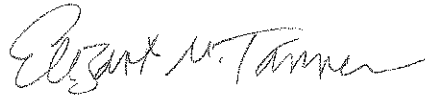
“VIII. The following order is made:

1. A stay is granted for the revocation of the Class BV license provided, however, that until a decision is issued by the Department following a full *de novo* hearing, the Appellant shall close on or before 11:00 p.m. each night that it is open.
2. A stay is not granted for the revocation of the extended (2:00 a.m.) license.
3. A police detail is mandated for Fridays and Saturdays and State holiday nights. Failure to have a police detail on a required day means the Appellant cannot open.
4. The Appellant shall assign security staff members during the week and weekends to the outside and to the Caserta’s parking lot (or any substitute parking lot to be used by patrons of which the Appellant informs the city in its new security plan) 30 minutes prior and 30 minutes after closing to monitor the exiting of patrons. Failure to have assigned security staff members on a required day means the Appellant cannot open.
5. The Appellant shall submit a new security plan and a new nuisance plan to the Board prior to re-opening which includes its procedures (for all times it is open) and specific resources it will employ: (a) to mitigate safety risks to patrons at the premises and persons in the surrounding neighborhood including procedures and resources for thorough pat downs upon entry, crowd control upon exiting and security presence in the parking lot, (b) to comply with bottle service and entertainment prohibitions, and (c) to mitigate noise and other neighborhood nuisance factors.
6. The Appellant shall play NO music (not even ambient) at any time and shall have NO entertainment of any kind and NO strobe lights.

Nothing in this order precludes the undersigned from revisiting this order because of a change in circumstances. E.g. the violation of any of the conditions could warrant a review of the stay order.

A hearing will be scheduled at a time mutually convenient for the parties.⁷ ”

Dated: July 31, 2019



Elizabeth M. Tanner, Esq.
Director

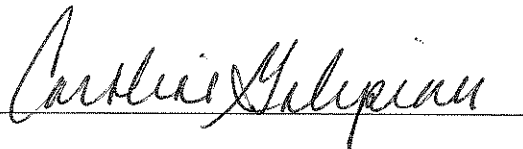
⁷ The Appellant is advised that pursuant to R.I. Gen. Laws § 3-7-21, it is the Appellant's responsibility to provide a stenographer at hearing.

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 APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 31 day of July, 2019, that a copy of the within Director's Decision and 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 Mmartone@providenceri.com, Nicholas Hemond, Esquire, DarrowEverett, LLP, One Turks Head Place, Providence, RI 02903 nhemond@darroverett.com, and by hand-delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920.



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. MOTION TO STAY

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." *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976). 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). While appeals before the Department do not fall under R.I. Gen. Laws § 42-35-15(c), 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.

IV. STANDARDS FOR DISORDERLY CONDUCT

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

Revocation or suspension of licenses – Fines for violating conditions of license.
– (a) Every license is subject to revocation or suspension and a licensee is subject to fine by the board, body or official issuing the license, or by the department or by the division of taxation, on its own motion, for breach by the holder of the license of the

conditions on which it was issued or for violation by the holder of the license of any rule or regulation applicable, or for breach of any provisions of this section.

(b) Any fine imposed pursuant to this section shall not exceed five hundred dollars (\$500) for the first offense and shall not exceed one thousand dollars (\$1,000) for each subsequent offense. For the purposes of this section, any offense committed by a licensee three (3) years after a previous offense shall be considered a first offense.

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

(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 or suspending a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. Rather, the Rhode Island Supreme Court held in *Cesaroni 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). Furthermore, 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. In a denial of renewal matter, the Rhode Island Supreme Court found in discussing the disorderly provisions that “[T]here need not be a direct causal link between incidents occurring outside or nearby a drinking establishment and its patrons. Such a link is established when it can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within.” *A.J.C. Enterprises* at 275. See *Furtado v. Sarkas*, 373 A.2d 169 (R.I. 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.

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) and *Pakse* (upholding revocation 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 with licensee failing to call the police 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. PRIOR DISCIPLINE

The licensing history for this location includes a prior licensee and violations for that licensee between 2010 and 2014. The parties agreed that the Appellant opened in July, 2018 and obtained a transfer of said License in November, 2018. Thus, the Appellant's prior discipline history includes a \$1,000 administrative penalty for bottle service on September 1, 2018. On December 15, 2018, there were two (2) instances of bottle service for which an administrative penalty of \$3,000 for one and \$1,500 for the other was imposed. An administrative penalty of \$500 for expired insurance in May, 2019 was imposed. There are three (3) pending matters from June, 2019 for entertainment without a license but no findings have been made Board in those

matters. In addition, in May, 2019, charges related to a shooting were dismissed by the Board. Overall, the Appellant's prior discipline consists of three (3) bottle service violations and as an insurance violation in 11 months.

VI. DISCUSSION

This matter involves a tragic killing that occurred after an altercation among many people outside the Appellant. The testimony at the Board hearing was that a group of people numbering between 10 to 15 were involved. The people involved had been patrons at the Appellant and the incidence happened at the Walgreens parking lot near the Appellant.

The parties agreed that the basis for the License revocation included a finding of violation of conditions of licensing by the Appellant vis a vis entertainment and the security plan. The Board made a finding of disorderly conduct based on the fight outside. The Board agreed that there was no evidence of any inside disturbance and no indication of such on the security videos. The Board found an entertainment without a license violation to which the Appellant stipulated. The Appellant stipulated that there were multiple bottle service violations the night in question but those were not included in the Board's findings.²

A. Arguments

The Appellant argued that there is no linkage between the tragic death and the Appellant since there was no disturbance or argument between the assailants (suspects) and the victim and his friends inside the establishment. The Appellant represented that the video showed that the victim and his friends and the suspects were inside for about two (2) hours but never interacted. The Appellant argued that the Board is well aware of the law regarding disorderly conduct but

² After the stay hearing, the Board provided the undersigned with the Appellant's licensing history and the September, 2018 security plan and December, 2018 nuisance mitigation plan. The Board has yet to forward its written decision for its July 24, 2019 decision.

ignored the evidence and the law. The Appellant argued that the video shows the victim interacting outside with someone across the street and then shots were fired before the group of people go up the street toward the Walgreens parking lot. The Appellant agreed it should be penalized under progressive discipline for other violations but argued it has already been closed for more days that it would be suspended under progressive discipline. The Appellant argued it has no sanctions for fighting, violence, or disorderly conduct. The Appellant argued it had a substantial likelihood of success on the merits. It argued it would suffer irreparable harm if a stay is not granted because it is losing business, good-will, staff, cannot pay rent, and are threatened with eviction. The Appellant argued there is no danger to the public as it has no history of violence. It argued a stay should be granted with conditions such as a police detail and no music at all.³

The Board argued that since the Appellant opened, there were problems. The Board argued that when it opened it had noise and fighting and at the time of the transfer that was brought to the attention of the Board by the neighbors, but the transfer was allowed to happen in November, 2018. The Board relied on *Cesaroni* to argue that the Appellant needs to prevent a nuisance in the neighborhood. The Board argued that two (2) weeks prior to this incident, the Appellant was denied entertainment licenses for the rest of June but still had entertainment on June 30, 2019. The Board argued that the Appellant violated its own security plan by not doing what it told the Board it would do. The Board represented the altercation started outside, then shots were fired, security ran inside, and but then the group moved toward Caserta's Pizzeria parking lot and no security was there, and they should have been there. The Board argued it is not known whether security could have stopped the incident, but the Appellant ignored its own security conditions so there is a danger

³ The Appellant is open on Wednesdays to Sundays.

to the public. The Board argued that there are no conditions that could allow the Appellant to operate in a safe manner since it is not a responsible licensee.

B. Whether a Stay Should be Granted

The information received by the undersigned is based on representations of the parties. The undersigned did not have a transcript of the Board hearing; however, an audio of the Board's hearings for July 10 and 17, 2019 and decision on July 24, 2019 were available online and the undersigned listened to those hearings.⁴

The testimony at the Board hearing was that the victim and his friends left the Appellant and two (2) to four (4) minutes later, the suspects left. The testimony was that two (2) to four (4) minutes after the suspects left, the altercation began. The altercation began with a verbal argument. There were gunshots fired that caused patrons and security to go back inside the establishment. There was no evidence and the Board did not argue that the gunshots were related to the altercation or the Appellant. The Board admitted that the suspects and victim and friends did not interact until outside. Nonetheless, the Board argued that under *Cesaroni*, the Appellant caused conditions that disturbs the neighborhood. The Board stated it was not arguing that entertainment without a license and the bottle service were a proximate cause of what happened outside but that those violations created irresponsibility and lawlessness inside the establishment since the owner was there and knew about them.

As stated above, *Cesaroni* found "[t]he word "disorderly" as used here contemplates conduct within premises where liquor is dispensed under a license that causes either directly or

⁴ <https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=11832&Format=Minutes>
<https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=11835&Format=Minutes>
<https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=11838&Format=Minutes>

During the Board hearing, various videos were played, but obviously, they could not be seen on the audio and only testimony about them could be heard.

indirectly conditions in the neighborhood in annoyance of or disturbing to the residents thereof.” *Id.* at 296. In *Cesaroni*, the Court found that the activities inside that establishment could be linked to the activities found to be a nuisance outside. As detailed in numerous decisions, this case requires that there must “conduct within.” There was no conduct within that can be linked directly or indirectly to the fight outside based on the Board’s own witness testimony and admissions at the Board and stay hearings.⁵

To try to get around the case law and its requirements for “conduct within,” the Board in making its findings brought up issues that were not on the record. The Board referenced that in November, 2018 at the transfer hearing, the objectors showed the Board a video of melee. Whether this melee was connected to the Appellant was never adjudicated by the Board. While at the transfer hearing, the Board may have been able to rely on such objections to deny the license application, it cannot rely on an unadjudicated melee in November, 2018 to find there was poor operation by the Appellant on June 30, 2019. The Board also decided that it would link the shooting in May, 2019 that it dismissed as part of a way to infer that the Appellant was indirectly responsible for causing disorderly conduct on June 30, 2019. The Board cannot rely on an incident

⁵ It is not enough that the people who fought outside had been the Appellant’s patrons to make the Appellant responsible for their actions. There is a very strict requirement that makes a licensee responsible for actions inside the bar and those outside activities that arise from inside the bar even if the licensee did not know of the actions or tried to supervise its patrons and prevent the activities. However, in order for the Appellant to be responsible there must be some kind of activity for which the bar is responsible for and from which it can be inferred the fighting arose. See *A.J. C. Enterprises* and *Cesaroni*. See also *Stagebands*. See also *Ciello, LLC d/b/a Club Luv v. City of Providence, Board of Licenses*, DBR No.: 17LQ008 (9/14/17) (discusses *Cesaroni* and *A.J.C. Enterprises*; those Supreme Court cases require that something happens inside from which an inference can be made of the connection. The conduct “within” (inside) directly or indirectly causes something outside.); *D. Liakos d/b/a Van Gogh v. Providence Board of Licenses*, DBR No.: 16LQ011 (10/31/16) (no evidence of any disturbance starting inside the bar and spilling outside where it culminated in the fight; the Providence Board found that there had been no disturbance inside the club so no inference could be made that the fighting that occurred outside after the patrons exited the club was somehow indirectly related to something that had happened in the club); *Ocean State Hospitality, Inc. d/b/a Fatt Squirrel v. Providence Board of Licenses*, DBR No.: 16LQ002 (3/31/16) (link between inside disturbance and outside fight); *Moe’s Place, Inc. d/b/a D’Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ022 (6/24/14); *Salacruz, LLC d/b/a Sky Lounge v. City of Providence Board of Licenses*, DBR No. 14LQ046 (11/25/14) (no link between licensee and a fight in a parking lot); *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); *Cardio Enterprises* (killing of patron with incident starting inside and escalating outside justified revocation).

that it dismissed to find that it shows the Appellant was poorly operated a month later. Finally, the Board also found that the shooting on June 30, 2019 was evidence of poor operation despite the fact that there was no evidence regarding the shooting and the Board did not rely on it at the stay hearing.

The Board was correct in finding that the Appellant was in continuous violation of bottle service (though it did not make such a finding on June 30, 2019 despite the Appellant's stipulation to a bottle service violation). It also was correct in finding that the Appellant had entertainment without a license specifically after being denied such a license. However, the Board cannot rely on factors that did not occur inside and are not part of the the record and have not been adjudicated to find proof the Appellant indirectly caused disorderly conduct outside on June 30, 2019.

The Board also argued that the Appellant failed to follow its security plan as represented at the transfer hearing as well as a security plan submitted in September, 2018 and nuisance mitigation plan from December, 2018. There was evidence that security was outside as patrons exited and that patrons and security went inside after the gunshots which was after the altercation started. The Board did state that security was outside but argued that the Appellant failed to post security at Caserta's parking lot and security did not walk up the street as patrons exited as it represented would be done at the transfer hearing. The Board did not argue that if a security guard had been there, it would have prevented the tragedy but that security should have been there under the plan. The Board argued that the Appellant did not call police after shots fired or about the altercation. The Appellant argued there was no evidence about calls to the police.

The Appellant represented that it is no longer is using Caserta's parking lot and disputed that it failed to follow its security plan. The Appellant argued that the security plan referred to the mass exodus exit at 1:55-2:00 a.m. (The incident occurred about 1:45 a.m.). The Appellant

disputed what security was required and indicated the nuisance plan was only for when there was entertainment (though that night there was entertainment even if no license had been given).

The Board argued that since the Appellant opened, it has been a problem. The Appellant opened in July, 2018. In November, 2018, it was granted a transfer of license apparently over the objections from neighbors. It should be noted that there is no right to a liquor license (including a Class BV and the extended 2:00 a.m. license). Rather, it is a matter of law that local licensing boards have broad discretion in deciding whether or not to grant a liquor license application. R.I. Gen. Laws § 3-5-19 governs the transfer or relocation of a liquor license. The transfer of a liquor license pursuant to R.I. Gen. Laws § 5-3-19 is treated the same as a new application. *Ramsay v. Sarkas*, 110 R.I. 590 (1972). See also *Island Beverages v. Town of Jamestown*, DBR No. 03-L-0007 (3/13/03). The Department has the same broad discretion as the local authority in the granting or denying of liquor licenses. *Bd. of Police Comm'rs v. Reynolds*, 86 R.I. 172, 177 (1975). However, the Department will not substitute its opinion for that of the local authority regarding granting or transferring a license but rather will look for relevant material evidence rationally related to the decision at the local level.⁶

In order to impose discipline such as a revocation, cause must be found. *Chernov Enterprises, Inc. v. Sarkas*, 109 R.I. 283 (1971) found that cause shall mean, "we have said that a *cause*, to justify action, must be *legally sufficient*, that is to say, it must be bottomed upon substantial grounds and be established by legally competent evidence." *Id.* at 287 (italics in original). See also *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269 (R.I. 1984).

The Board argued that the Appellant is a danger and raised the issue of prior instances of noise and fighting but there is no history of violence or disorderly conduct at the Appellant. Its

⁶ See *101 North Main Street Condominium Association, Pamelee and Raymond F. Murphy, Jr. v. City of Providence, Board of Licenses*, DBR No.: 16LQ003 (8/9/16); and *Donald Kinniburgh d/b/a Skip's Place v. Cumberland Bd. of License Commis'srs*, LCA-CU-98-02 (8/26/98).

only prior violations were three (3) bottle service violations and an insurance violation. The Board has never imposed a mandatory police detail. On the night in question, it clearly had entertainment without a license (when it had specifically been denied a license) and bottle service (again). Clearly both of those violations would be subject to progressive discipline. (There are also three (3) pending entertainment without a license allegations before the Board).

In dispute is whether the Appellant followed its security plans. The Board found violations of conditions of licensing in terms of the required security at the Appellant. What security was required and what was done that night is in dispute. The incident occurred at about 1:45 a.m. so only approximately 15 minutes prior to the Appellant's 2:00 a.m. closing time. The nuisance mitigation plan requires security to be in the parking lot when it is being used but also states that security staff will be in the Caserta's parking lot a half hour prior to closing through a half hour after closing. While the Appellant represented that it no longer was using Caserta's parking lot, the Board was apparently unaware of any change in the security plan and it was also represented that the Appellant was to maintain a security presence on the street up to said parking lot at closing time.

It is clear from the testimony and the Board's own admissions that under the Rhode Island Supreme Court case law regarding disorderly conduct and liquor licensing, there is no link either directly or indirectly between the Appellant and the tragic fight. Thus, the Appellant does have a substantial likelihood of success on the merits on this allegation.

It is clear that progressive discipline would be imposed for the entertainment without a license and any potential bottle service violations (if found on appeal to the Department). As argued by the Appellant, such a sanction would be less than what the Appellant has served. See *Davinci Lounge and Restaurant Inc. and Davinci Cigar Bar, Inc. v. City of Providence, Board of*

Licenses, DBR No. 19LQ004 (4/3/19) (discussion of progressive discipline regarding entertainment without a license and public smoking violations and the interplay with prior discipline).

The parties disputed whether the Appellant's security plan was followed. It is clear that there was security outside, but unclear is the issue of the exiting patron and how security should be placed at that time especially with a late night closing. The nature of the security violation(s), if any, cannot be ascertained without a full hearing. The Department has previously imposed sanctions for security failures. See *Ciello, LLC d/b/a Club Luv v. City of Providence, Board of Licenses*, DBR No.: 17LQ008 (9/14/17).

While the Board invoked fighting and violence, the Appellant's only prior discipline is three (3) bottle service violations and an insurance violation. The Appellant has a history of violating bottle service laws. While the Board raised the issue of noise and entertainment without a license, the only violation for entertainment is that night in question. The Appellant pointed out the Board has never imposed a police detail.

VII. CONCLUSION

The Department has consistently followed progressive discipline barring an egregious act. Applying the stay criteria, 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. However, it is discretionary to issue a stay in order to maintain the *status quo* pending an appeal. In this matter, the Appellant has a substantial likelihood of success on the merits in relation to the disorderly conduct. The issue of security cannot be ascertained without a full hearing. The sanctions to be imposed for progressive discipline for the entertainment and bottle service violations are less than the time the Appellant has already been closed. If a stay is not granted for the revocation, the Appellant will not have a meaningful appeal. There seems to be an issue regarding the exiting of patrons which can be

addressed by having a police detail – which the Appellant has not had - and a revised security plan. Furthermore, as this incident occurred at 1:45 a.m., denying the stay for the revocation of the extended hour license addresses the late night security issues. Granting a partial stay maintains the *status quo* pending the full hearing. It should be noted that by the time this order is issued the Appellant will have been closed approximately 30 days.

VIII. RECOMMENDATION

Based on the foregoing, the undersigned recommends that following order be made.


1. A stay is granted for the revocation of the Class BV license.
2. A stay is not granted for the revocation of the extended (2:00 a.m.) license.
3. A police detail is mandated for Fridays and Saturdays and State holiday nights. Failure to have a police detail on a required day means the Appellant cannot open.
4. The Appellant shall assign security staff member(s) during the week and weekends to the outside 30 minutes prior and 30 minutes after closing to monitor the exiting of the patrons.
5. The Appellant shall submit a new security plan to the Board prior to re-opening which includes its procedures (for all times it is open) for crowd control upon exiting.
6. The Appellant shall play NO music (not even ambient) at any time.

Nothing in this order precludes the undersigned to revisit this order because of a change in circumstances. E.g. the violation of any of the conditions could warrant a review of the stay order.

A hearing will be scheduled at a time mutually convenient for the parties.⁷

⁷ The Appellant is advised that pursuant to R.I. Gen. Laws § 3-7-21, it is the Appellant's responsibility to provide a stenographer at hearing.

Dated: July 29, 2019


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
_____ MODIFY

Dated: _____

Elizabeth M. Tanner, Esquire
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.

CERTIFICATION

I hereby certify on this _____ day of July, 2019 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, Nicholas Hemond, Esquire, DarrowEverett, LLP, One Turks Head Place, Providence, RI 02903, and and by hand-delivery to Pamela Toro, Esquire, Associate Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920

ATTACHMENT 2



City of Providence - Board of Licenses

Jorge O. Elorza, Mayor

Heather Kilkenny, License Administrator

Wednesday, July 03, 2019

1 Owner Seven Providence LLC **Capacity(1)**
 DBA Seven Lounge **Capacity(2)**
 Address 114 Spruce Street **Capacity(3)**
 Class BV BX EDX N Entertainment Lic
 Comment issued 11/9/09; d/b/a change to Biergarten. d/b/a changed to Seven; li

VIOLATION 1

Violation Date 7/23/2010 **Type** Entertainment w/o Licence **Counts** 5
Detail
Hearing Date 11/18/2010 **Type** Show Cause
Action Fine Imposed **Fine** \$2,745.00 **Days Closed** 0
Detail Motion by Ragosta; sec by Bianco to impose \$1220 fine for outdoor ent 8/9/10/11/2010; Outdoor 8/10 - \$775; 9/10 - \$750; vote 5-0

VIOLATION 2

Violation Date 7/11/2011 **Type** Multiple **Counts** 3
Detail
Hearing Date 9/22/2011 **Type** For Decision
Action Fine Imposed **Fine** \$2,000.00 **Days Closed** 0
Detail Motion by Comm Bianco; sec Comm Maynard to impose \$2,000 fine for 1: op licensed prem in contravention of pub interest; 2: inability to maintain supervision of patrons; 3: violating conds of license; vote 5-0

VIOLATION 3

Violation Date 8/8/2011 **Type** Multiple **Counts** 3
Detail
Hearing Date 9/28/2011 **Type** Pre-Hearing Conference
Action Fine Imposed **Fine** \$500.00 **Days Closed** 0
Detail Motion Comm Bianco; sec Comm Maynard to impose \$500 fine for 1: Op in contravention of public int; 2: Inability to maintain sup; 3: viol conds of lic; vote 3-0; Comms Batista & Williams not present

VIOLATION 4

Violation Date 12/1/2011 **Type** Multiple **Counts** 2
Detail
Hearing Date 1/9/2012 **Type** Pre-Hearing Conference
Action Fine Imposed **Fine** \$250.00 **Days Closed** 0
Detail Motion by Bianco; sec Maynard to impose \$250 fine for 1: Advertising Drink Specials; 2: Violating Conds of L icense; vote 4-0; Comm Batista not present for vote

VIOLATION 5

Violation Date 7/23/2011 **Type** Multiple **Counts** 2

Detail

Hearing Date 1/19/2012 **Type** For Decision

Action Fine Imposed **Fine** \$3,000.00 **Days Closed** 0

Detail Motion by Comm Bianco; sec C omm Maynard to impose \$1500 Fine for 1:Admissions Restricted & Supervised and 2:\$1500 fine for Violation of Seasonal Expansion = \$3,000; vote 4-0; Comm Batista absent

VIOLATION 6

Violation Date 3/9/2013 **Type** Multiple **Counts** 2

Detail

Hearing Date 5/9/2013 **Type** For Decision

Action Multiple **Fine** \$2,000.00 **Days Closed** 0

Detail Motion Comm Bianco; sec Comm Rodriguez to impose 1. \$1000 fine for Sale of Alcohol Bevs by Bottle; 1. \$1000 Fine for Dispensation of Alcoholic Bevs by Patron; vote 5-0

VIOLATION 7

Violation Date 12/21/2013 **Type** Multiple **Counts** 5

Detail

Hearing Date 3/3/2014 **Type** Show Cause

Action Charge Dismissed **Fine** \$0.00 **Days Closed** 0

Detail Motion Comm Rodriguez-Masjoan; sec Comm Harris to dismiss all charges - inab to main order; permitting dis ord house; creating/causing nuisance; permitting laws of state to/b violated; vote 5-0

VIOLATION 8

Violation Date 6/29/2014 **Type** Multiple **Counts** 34

Detail

Hearing Date 11/5/2014 **Type** Show Cause

Action Fine Imposed **Fine** \$4,000.00 **Days Closed** 0

Detail Motion Comm Rodriguez[sec Comm Pichardo to impose \$4000 fine for disturbances on 6/29; 7/19 and 25; vote 3-0; Comm Bianco & Williams absent; DBR reduced fine to \$2000 12/22/14

VIOLATION 9

Violation Date 9/1/2018 **Type** Other **Counts** 1

Detail Bottle Service

Hearing Date **Type** Pre-Hearing Conference

Action Fine Imposed **Fine** \$1,000.00 **Days Closed**

Detail

VIOLATION 10

Violation Date 12/15/2018 **Type** Other **Counts** 1
Detail Case Report 18-130067 Bottle Service
Hearing Date 1/28/2019 **Type** Pre-Hearing Conference
Action Fine Imposed **Fine** \$3,000.00 **Days Closed**
Detail

VIOLATION 11

Violation Date 1/25/2019 **Type** Other **Counts** 1
Detail Case Report 19-7891 Bottle Service
Hearing Date 1/28/2019 **Type** Pre-Hearing Conference
Action **Fine** \$1,500.00 **Days Closed**
Detail See violation #10

VIOLATION 12

Violation Date 5/20/2019 **Type** Disturbances/Illegal Activity **Counts** 1
Detail Case Report 19-46175 Shooting
Hearing Date 5/23/2019 **Type** Emergency Hearing
Action Charge Dismissed **Fine** **Days Closed**
Detail Emergency closure from May 20 to May 22; establishment allowed to open 5/22/2019 with police detail and increased private security personnel; violation dismissed on May 23 2019 - no further police detail or other conditions in place

VIOLATION 13

Violation Date 5/29/2019 **Type** Other **Counts** 1
Detail Case Report 19-50302 Expired insurance
Hearing Date 6/19/2019 **Type** Show Cause
Action Fine Imposed **Fine** \$500.00 **Days Closed**
Detail

VIOLATION 14

Violation Date 6/6/2019 **Type** Entertainment w/o Licence **Counts** 1
Detail Case Report 19-57388
Hearing Date 7/8/2019 **Type** Pre-Hearing Conference
Action **Fine** **Days Closed**
Detail Matter pending

VIOLATION 15

Violation Date 6/13/2019 **Type** Entertainment w/o Licence **Counts** 1
Detail Case Report 19-57401
Hearing Date 7/8/2019 **Type** Pre-Hearing Conference
Action **Fine** **Days Closed**
Detail Matter Pending

VIOLATION 16

Violation Date 6/27/2019 **Type** Entertainment w/o Licence **Counts** 1
Detail Case Report 19-62456
Hearing Date 7/8/2019 **Type** Pre-Hearing Conference
Action **Fine** **Days Closed**
Detail Matter pending

VIOLATION 17

Violation Date 6/30/2019 **Type** Entertainment w/o Licence **Counts** 1
Detail Case Report 19-32411
Hearing Date 7/8/2019 **Type** Pre-Hearing Conference
Action **Fine** **Days Closed**
Detail Matter pending

POLICE DETAIL

Date Mandated **Num Officers** **Reason**
Stipulations
Comment

Number of Records: 0 **Total Fine Amount** \$20,495 **Total Days Closed** 0

ATTACHMENT 3

SEVEN PROVIDENCE NUISANCE MITIGATION PLAN

Noise Issues

- Working with the owner to complete installation of new sound proofing equipment and materials to better contain noise from entertainment within the building.
- Working with Eric Wishart, a civil engineer with experience in noise mitigation, to study the noise levels and travel of the noise in the area in and around the building.
 - Sound tests to ensure that noise is below the requirements of the Noise Ordinance.
 - Conduct ongoing status checks.
- Purchase of meters to conduct independent sound checks periodically while open.

Parking

- Have worked out an agreement to utilize the parking lot of Casserta Pizza for guests to park.
- Security Staff will monitor the parking lot throughout the evening and have an increase presence in the half hour prior to closing through a half hour after closing.
- Security Staff will work to disburse patrons peacefully from the lot and report any criminal activity or public safety issues to Providence Police.

Disbursement

- Security will have a presence when the parking lot is being utilized.
- Security will increase its presence in the parking lot for the half hour prior to closing through a half hour after closing.
- Security working on the interior of the building will move to the exterior building with the crowd as it exits.
- Security will encourage patrons to exit the area in as peaceful a manner as possible.
- Security staff will remain on the premises until all patrons have exited the premises and some security will remain in the front of the building until a half hour after closing.
- Security will report any incidents or altercations requiring police intervention to the Providence Police.
- Club staff will clean the immediate area of the establishment each day from trash.

Submitted 9/13/18

SECURITY PLAN

The Rack, Inc.

D/B/A

Seven

STAFFING AND TRAINING

Seven will employ a well-trained and professional security staff. Security staff will wear uniforms which clearly distinguish them from patrons and other staff members of Seven.

Security Staff members will wear black shirts which read "SECURITY" across their backs.

Security staffing levels will be determined in accordance with the generally accepted practice of one security staffer per 35 patrons. There will be at least two members of the security team at the front entrance to the establishment. One shall be responsible for checking IDs and the other shall be conducting a thorough security pat down on evenings when there is entertainment.

All security staff shall be properly licensed and trained. Immediately upon being hired, security personnel shall be directed to the Board of Licenses where they will file the appropriate paperwork for the city background check and floor host certificate (\$50.00 cost to be paid by Seven). Additionally, all security personnel shall complete a training program that meets the requirements of the rules and regulations of the City of Providence.

Seven shall invest in a radio system for security personnel to ensure for adequate communication between security staff and management at all times.

POLICIES AND PROCEDURES

I. Entrance Procedures

- There shall be two members of the security team posted at the entrance to the club.
- One shall be responsible for checking ids of patrons
 - IDs shall be inspected in accordance with the training received by the staff member.
 - Staff shall be equipped with a black light and loop for examination of IDs.

- No one shall be allowed into the club under any circumstance without presenting an ID, regardless of apparent age.
- Underage drinking SHALL NOT be tolerated under any circumstances and staff shall confiscate all fake IDs and report them to the police.
- Management shall be responsible for ongoing revision and updating of these procedures in accordance with new information obtained relative to best practices for checking fake IDs.
- The other shall perform MANDATORY security pat down checks when there is entertainment.
 - Staff shall perform security pat downs pursuant to the training received in accordance with best practices across the industry.
 - Special attention shall be paid to pieces of clothing where weapons are commonly hidden.
 - Shoes, belts, pockets, necklaces/chains, etc.
 - Staff shall be equipped with a metal detecting wand and all patrons shall be examined by the wand in addition to the pat down.
 - Staff shall inspect all bags and purses that patrons attempt to bring into the establishment.
 - Staff shall confiscate all contraband at the door.
 - No drugs, outside liquids, pills or weapons shall be allowed into the establishment.
- Staff shall not allow patrons under 21 into the establishment.

- Staff shall not allow anyone who appears to be overly intoxicated into the establishment.
- Staff shall not allow anyone who has previously been removed from the establishment for past incidents of violence into Seven.
- Staff shall not allow anyone who refuses to comply with these policies into the establishment.
- Staff shall call the Police in the event that a patron refuses to leave the premises without incident after being refused admittance.
- The security team member who is responsible for checking IDs shall also be equipped with a clicker for the purposes of monitoring the capacity of the building as people are entering.

II. Fixed Posts and Floating Security

- Prior to opening each day there shall be a pre-shift meeting for security staff to go over policies and procedures and to assign team members to their particular posts each day.
 - This will also serve as the opportunity to ensure all communications equipment is properly functioning.
- A security team member shall be stationed at a fixed post at every entrance and exit to the establishment to ensure that no one enters the establishment other than through the main entrance.
- In addition to fixed posts, security team members will also be assigned as “floaters” who will walk throughout the establishment as the night goes on to ensure that all rules are being complied with by patrons.

- At all times, there will be two security team members assigned to the main entrance where security and id checks will occur prior to admittance.
- Management shall work with the Providence Police by way of a walkthrough with the Police to get Police input on position of the fixed posts to ensure public safety.

III. Altercations

- Public safety is the number one responsibility of all staff members of Seven. All staff members are to be constantly on the lookout for potential disturbances or violent incidents before they happen.
 - HOWEVER ONLY PROPERLY TRAINED AND LICENSED SECURITY PERSONNEL ARE TO ATTEMPT TO GET IN BETWEEN A PHYSICAL ALTERCATION.
- No members of the staff other than trained security personnel are to ever attempt to get in between a physical altercation.
- If a staff member believes a physical altercation is imminent or has seen one occur, that staff member shall immediately notify management and security personnel.
 - If security personnel is for any reason unavailable or unable to immediately gain control of the situation then staff shall call Providence Police.
- Security personnel shall immediately act pursuant to their training to subdue any disturbance that occurs.
 - Security personnel shall use the least amount of force necessary to remove the patrons from the establishment.

- Security personnel shall separate the parties and then remove them from the premises.
 - Security team members shall work together to ensure their safety and the safety of the other patrons.
- Security personnel shall remove disorderly patrons through the nearest separate exits in order to separate the parties involved in an altercation.
- Security personnel shall then instruct the parties to leave the area immediately and shall maintain visual contact with them until they have left the area.
- Security personnel shall act to ensure that fighting does not resume outside the club.
 - If security is unable to stop the fighting either within or outside the club then the Providence Police shall be called to assist in restoring
- If patrons refuse to leave then the police shall immediately be called.
- When in doubt about the ability to maintain control and public safety, call the police immediately.
- Security staff shall report any use of weapons to the police.
- Security staff shall report all injuries to the police.

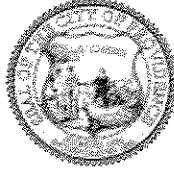
IV. End of Night and Exiting Patrons

- All patrons shall exit through the main exit at the end of the night.
- On nights with 2am closing times:
 - Lights on at 1:45am
 - Music off at 1:45am

- Establishment Empty by 1:55am
- Security Staff shall remain on site until 2:20 to ensure all patrons have returned to their vehicles and left the area in an orderly fashion.

DRESS CODE

Proper dress shall be required. No sneakers, no hooded sweatshirts, no hats allowed.

**CITY OF PROVIDENCE**

Jorge O. Elorza, Mayor

July 30, 2019

Seven Providence, LLC
d/b/a Seven
114 Spruce Street
Providence, RI 02903

IN RE: Seven Providence LLC d/b/a Seven Lounge

Dear Licensee:

This matter was before the Providence Board of Licenses on July 24, 2019, for decision after public hearing which was completed on July 17, 2019, on a show cause petition filed against Seven Providence, LLC d/b/a Seven, 114 Spruce Street for an incident occurring on June 30, 2019.

The Board heard testimony from the Providence Police, viewed video evidence and heard argument from both counsel. The licensee did not provide testimony during the proceeding. The following facts have been established before the Board regarding the incident:

1. At approximately 2:00 AM on June 30, 2019, Sgt. David Tejada of the Providence Police responded to 333 Atwells Avenue (Walgreens parking lot) to investigate a reported stabbing in that area.
2. Earlier in the evening, Sgt. Tejada had been to the area of Spruce and Acorn Streets and heard music emanating from the licensee's establishment.
3. The Board took administrative notice of its prior action in denying an entertainment license for Seven Providence, LLC for June.
4. Sgt. Tejada further stated that patrons from the licensee's establishment typically use parking lots at Caserta's Pizza and on Spruce Street in the area of the Walgreens parking lot.
5. Det. Theodore Michael testified that he obtained video evidence for the area along Spruce Street and was provided with the licensee's system but that the password was unavailable.
6. An assault culminating the stabbing death of the victim occurred in the area of Spruce and Acorn Streets, which escalated from verbal to physical in the space between the intersection and the parking lot of Walgreens.
7. Both the victim and the suspected assailants were inside Seven and could be seen exiting the premises around two to four minutes before the altercation. There was an approximately sixty-foot area of Spruce Street adjacent to Seven which was not visible on the available video presented to the Board.

8. The City stipulated to Det. Michael's testimony that investigation and video review did not show any evidence of an incident inside the establishment on June 30, 2019.
9. The victim left Seven at approximately 1:47 AM and the suspects left the premises about two minutes later. There is some interaction between the victim and the suspects which is visible through the front window of Seven facing Spruce Street. In accordance with the information from the investigation, there appeared to have been shots fired shortly after the suspects passed the area of the window.
10. The video evidence showed a DJ and strobe lighting consistent with entertainment on the night of the incident. Additionally, the victim and his companions were served bottles of alcohol that evening.
11. The Board took further administrative notice of its proceedings on November 18, 2018, at which the licensee indicated that the area along Spruce Street, including the Caserta's parking lot, would be monitored by security staff. Further, at the hearing, the Board noted that the licensee was advised as to the prohibition against bottle service in Rhode Island.
12. The Board took administrative notice of a hearing on June 12, 2019, informing the establishment owner that there could be no entertainment at the premises for June.

The Board voted unanimously to accept the preceding as the finding of fact regarding the matter.

Based upon the facts contained in the record, the Board voted unanimously to find that the City established the following violations:

1. Violating RIGL § 3-5-21 and as a result the breach of the conditions on which the license to sell alcoholic beverages was issued;
2. Violating RIGL § 3-5-23 permitting the premises in and around the establishment to become disorderly;
3. Violating RIGL section 5-22-1.1 entertainment without a license;
4. Violating Providence City Code § 14-1 causing a disturbance between the hours of 1 AM to 4 AM; and
5. Violating an order of the Board concerning entertainment on the premises.

In determining the appropriate penalties in these matters, the Board is mindful of the standard set forth in the case of *Jake and Ella's Inc. v. Department of Business Regulation*. In considering the factors, the Board noted:

1. The incident constituted a nuisance to the health, welfare and quality of life of the public as a result of the failure of the licensee to adhere to the laws of the State and City, with regard to public safety, noise and entertainment.
2. The harm to the community posed by the violation was severe, given the outcome resulting from the licensee's lack of responsible operation.
3. The Board took administrative notice of the fact that the licensee's violation history, maintained by the Licensing Office, showed violations for bottle service at the premises and an expired certificate of insurance while operated by the current license holder as represented at the transfer hearing.

The three *entertainment without a license* show cause complaints in June 2019 which have not been adjudicated are not part of the violation history.

The Board voted unanimously to take administrative notice of the record of the licensee and the factors associated with the imposition of the penalties.

Based upon the foregoing and the Chairman's Memorandum of Law as read into the record and attached hereto, the Board voted to revoke all licenses held by Seven Providence, LLC d/b/a Seven effective immediately.

If this decision aggrieves you, you have ten (10) days from the date this decision to take an appeal to the Department of Business Regulation, State Liquor Control Administration for any and all matters pertaining to the liquor license at this establishment. Additional licenses including food, entertainment, and/or extensions of liquor service may require appeal through the State court system.

If you have any questions, you may contact this office.

Sincerely,



Heather Kilkenny
License Administrator

cc: Sgt. David Tejada, License Enforcement Unit
Mario Martone, Esq.
Nicholas Hemond, Esq.

**CITY OF PROVIDENCE
BOARD OF LICENSES**

Seven Providence, LLC d/b/a Seven <i>Licensee</i>	:	July 24, 2019 Show Cause Hearing
	:	
v.	:	
	:	
City of Providence <i>Plaintiff</i>	:	
	:	

Chairman’s Memorandum of Law

In Support of Chairman’s Request for Revocation of all Licenses

Revocation of a liquor license may occur either for a severe infraction or a series of smaller infractions that rise to a level of jeopardizing public safety. *See* D.Liakos d/b/a Van Gogh v. City of Providence Board of Licenses, DBR No.: 16LQ011 at 6, *citing* Stage Bands, Inc. d/b/a Club Giza v. Department of Business Regulation, 2009 WL 3328508 (R.I. Super.) (disturbances and a shooting on one night justified revocation), and Pakse Market Corp. (upholding revocation of a licenses where 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 a patron with incident starting inside and escalating outside justified revocation).

In this case, there are a myriad of smaller infractions. The outline below is an attempt to produce a timeline of the licensee’s issues with its oversight board.

1. November 8, 2018 – Transfer
 - a. Seven began operating three months before the Transfer (Transcript p. 40)
 - b. Claims of \$20,000-\$30,000 worth of sound proofing

- c. Claims of a security guard stationed at the Caserta Pizza Parking lot and manage dispersal from Pastiche to Caserta
 - d. Objector's video shows a large-scale brawl
 - e. Objector sites personal experience as a neighbor that the area has changed in character since Seven began operating
 - f. Explicitly warned regarding bottle service (Transcript p. 43)
 - g. Transfer was contingent upon addressing the noise and submitting a nuisance mitigation plan
2. December 5, 2018 – Entertainment
 - a. Licensee was not present, attorney just happened to be there
 - i. Nuisance Mitigation Plan submitted as requested
 1. Noise, Parking, Disbursement
 - a. Control Caserta Parking Area
 2. \$40,000 of sound proofing claimed, not proof of that being realized, to the contrary there are routine noise issues which resulted in denial of the entertainment license in May/June 2019.
3. May 20, 2019 – Show Cause
 - a. Emergency Show Cause regarding shooting
 - i. Only establishment open in that immediate vicinity at that time
4. May 29, 2019 – June Entertainment
 - a. Licensee was not present for hearing
 - b. Board is given notice of that Licensee has not had insurance since April 2, 2019 (Transcript P. 32), Board issues Cease and Desist, closes establishment
 - c. Extensive Objections to Entertainment and the club more generally (Transcript P. 41 – 65; e-mails etc.)
 - i. Noise
 - ii. Cleanliness
 - iii. Violence
 - iv. Impairs business etc.
5. June 5, 2019 – Insurance Issue Show Cause
 - a. Facts Agreed Upon, there was an insurance lapse, written decision forthcoming
6. June 5, 2019 – June Entertainment
 - a. Licensee request to continue to the 12th to respond to May 29, 2019 public objections
 - i. Express description of exactly what “no entertainment” means (*see* Transcript P. 57-59)
 1. Despite this, there are was entertainment without a license *the next night*, and there are three more pending entertainment without a license issues from the month of June.
7. June 6, 2019 Hearing – Show Cause, Insurance Lapse - Decision

- a. Licensee did not show up at hearing
 - b. Five (5) Week Lapse in Insurance Coverage
 - c. Max penalty seemed to be a \$2,000 fine, \$500 Fine Issued based on mitigating information
8. June 12, 2019 – Entertainment, Continued from June 5
- a. Strong opposition from the public and police (*see* 6/12/19 Transcripts p. 25-44)
 - i. Business Complaints (which are rare) re: Sound, neighborhood concerns, cleanliness, violence etc.
 - ii. Resident Objections for all of the above
 - iii. Police Licensing Unit and District Commander objections
 - iv. Elected Officials Objecting
 - v. Unresolved questions regarding zoning approvals

In order to sanction a liquor license, there must be substantial grounds established by the preponderance of legally competent evidence. *See Van Gogh at 10, citing A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269 (R.I. 1984); *Jackson Furniture Co. v. Lieberman*, 14 A.2d 27 (R.I. 1940); *Parenti v. McGonaghy*, 2006 WL 1314255 (R.I. Super.); *Manny’s Café, Inc. v. Tiverton Board of Commissioners*, LCA TI-97-16 (11/10/97). It is not necessary to find that a liquor license affirmatively permitted patrons to engage in disorderly conduct. *Van Gogh*, at 11. The Rhode Island Supreme Court held 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 the maintenance of nuisance therein.

[...] The word “disorderly” as used here contemplates conduct within the 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.

Cesaroni v. Smith, 202 A.2d 292, at 295-296 (R.I. 1964). Emphasis added. 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.” *Van Gogh*, at 12, *quoting Schillers, Inc. v. Pastore*, 419 A.2d 859 (R.I. 1980). (Emphasis Added.)

“There **need not be a direct causal link** between incidents occurring outside or nearby a drinking establishment and its patrons. Such a link is established when it can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within.” Van Gogh, at 12, *quoting A.J.C. Enterprises*, at 275.

The indirect impacts of Club Seven’s operation on the neighborhood have been an issue even before the transfer of the license on or about November 8, 2018. Objectors detailed concerns about noise and safety and produced a video of a large fight in the general vicinity of the licensee. In turn, the Licensee stated that it would manage dispersal from Caserta’s to Pastiche (Transcript P. 17) and the Board of Licenses requested a security plan, improvements to the sound issues, and a nuisance mitigation plan. The video detailing the management of the license on the night of the murder had the following violations of the security plan:

- There was no “thorough security pat down” “in accordance with the best practices across the industry.” There was not metal detector wand. By inferring from the “x” marked on some patrons hands, it appears that they were admitting persons under the age of 21.
- Security personnel was to act to ensure that fighting did not resume outside the club and to contact police if it did. The record indicates that on at least two occasions fighting occurred outside the club and it further appears that the security personnel failed to adequately alert the police regarding the use of weapons.
- Security was to ensure that all patrons have left the area in an orderly fashion up until 2:20am. The murder occurred in the area before 2:20am.

The administrative record and video of the evening in question indicates the following violations of the Nuisance Mitigation plan:

- Noise problems continued indicating either that the sound proofing never occurred or was inadequate
- Security Staff failed to monitor the Caserta Pizza parking lot from 1:30am-2:30am.
- The video did not appear to show any evidence that the security moved outside at the close of the night to support dispersal.
- Security did not appear report the incident to the Providence Police.

It is clear that the licensee does not take the conditions of the license seriously. The licensee does not even abide with the security and nuisance mitigation plans it created itself. The management of the establishment appears to be lax to the point of nonexistent. In fact, the lack of existence of management is routinely substantiated by management's continued failure to appear before the Board of Licenses for scheduled public hearings.

In sum, based on well settled legal precedent, the responsibility of a licensee requires the licensee to control both the direct and indirect impacts the operation of the license has on the surrounding neighborhood. A licensee is responsible for the conduct of its patrons whenever the Board of Licenses can reasonably infer, based on a preponderance of the evidence, that a licensee tolerates or acquiesces to such conduct. Van Gogh, at 10, 11, 12, *citing Cesaroni*, at 296.

Accordingly, while there is evidence that a patron was killed at the hands of other patrons, there is no direct evidence of the altercation starting inside Club Seven. But, the Rhode Island Supreme Court and the Department of Business Regulation does not permit our analysis to end there. The question remaining is, whether a preponderance of the evidence gives sufficient grounds for the Board of Licenses to reasonably infer that the operation of Club Seven was an indirect cause of disorderly behavior in the neighborhood.

Let's start with the element of disorderly conduct. In chronological order, based on the administrative record, there was:

- Large scale melee in the general vicinity of the club on or about November or October of 2019.
- A shooting in the general vicinity of the club on or about May 20, 2019.
- A murder in the general vicinity of the club on or about June 30, 2019.

Each of those incidents are undoubtably disorderly, the question is whether or not Club Seven was a cause for any of those incidents. If only one of those incidents had happened within the general vicinity of the club, it may be unreasonable to infer that the operation of the club served as an

indirect cause of the disorderly conduct. However, the pattern of incidents escalating over the course of less than a year culminating in death leads me to reasonably infer that the operation of the club was an indirect cause in each of those disorderly incidents.

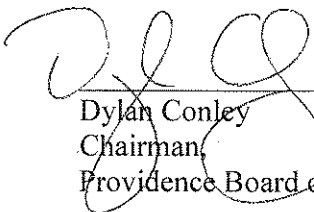
The Rhode Island Supreme Court and the Department of Business Regulation also requires this Board to analyze whether or not the licensee tolerates or acquiesces to such behavior by its patrons. Here, there is direct evidence that the licensee condones disorderly conduct within its establishment. The following incidents are a matter of the administrative record:

- September 1, 2018 – Bottle Service
- November 8, 2018 – Transfer Hearing, objections including a video of a large scale fight in the general vicinity of the establishment
- December 15, 2018 – Bottle Service
- January 25, 2019 – Bottle Service
- May 20, 2019 – Shooting in the area
- May 29, 2019 – Expired Insurance
- June 5, 2019 – Entertainment License denied by the Board based on the objections of Neighbors, Elected Officials, Public Safety Officers, and Businesses.
- June 6, 2019 – Entertainment without a license
- June 13, 2019 – Entertainment without a license (pending)
- June 27, 2019 – Entertainment without a license (pending)
- June 30, 2019 – Entertainment without a license (pending), Bottle Service (Pending), Adult Entertainment (Raised *sua sponte* herein, pending)
- June 30, 2019 – Shots fired in the vicinity; patrons murdered another patron in the vicinity.

Based on the violation history, the Board can reasonably infer that the licensee's business plan requires the licensee to actively attempt to circumvent the State of Rhode Island's laws regarding bottle service and to completely ignore the City of Providence's entertainment provisions. Including, I must add *sua sponte* based upon the Board's review of the video from the night of the murder, adult entertainment violations of both City Ordinance and the special use permit allowing for entertainment zoning at that location.

In other words, the preponderance of the evidence of the record leads me to reasonably infer that a successful night for Club Seven is a night where they generate more revenue by breaking the law than they lose by being caught. There are several matters still pending from incidents in the month of June because Seven violates the law faster than the City can enforce it, and that is precisely the idea. Seven's business plan is to keep speeding and just pay the ticket. But speeding endangers lives. Accordingly, because Club Seven purposefully operates outside the laws of our state and our city, it has created an atmosphere that has been at least indirectly causal to a brawl, two shootings, and a murder. Moreover, this licensee ignores the promises it makes to the Board in its security plan and nuisance mitigation plan and the conditions on its licenses related to entertainment. There is no indication that Seven either wishes to or is capable of obeying the restrictions of its licenses. Therefore I ask this Board for a motion to revoke all licenses related to the operation of Club Seven.

As read into the record,



Dylan Conley
Chairman
Providence Board of Licenses