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

Pasha Lounge, Inc. d/b/a Pasha Hookah Bar, Appellant,	:	
v.	:	**DBR No.: 15LQ0022**
City of Providence, Board of Licenses, Appellee.	:	

RECOMMENDATION AND INTERIM ORDER CONDITIONALLY GRANTING MOTION FOR STAY

I. INTRODUCTION

Pasha Lounge, Inc. d/b/a Pasha Hookah Bar ("Appellant") seeks a stay of the City of Providence, Board of Licenses' ("Board") decision taken on November 19, 2015 to deny renewal of its Class B liquor license ("License").[1] The Board objected to the Appellant's motion. This matter came before the undersigned on November 20, 2015 in her capacity as Hearing Officer as the designee of the Director of the Department of Business Regulation ("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.*

III. DENIAL OF APPLICATION FOR RENEWAL OF LICENSE

Pursuant to R.I. Gen. Laws § 3-7-6, the Appellant's Class B application for renewal of license may be denied "for cause." Said statute provides as follows:

[1] The License expires on December 1, 2015.

> Renewal of Class A, Class B, Class C, Class D, Class E, and Class J licenses. The holder of a Class A, Class B, Class C, Class D, Class E, or Class J license who applies before October 1 in any licensing period for a license of the same class for the next succeeding licensing period is prima facie entitled to renewal to the extent that the license is issuable under § 3-5-16. This application may be rejected for cause, subject to appeal as provided in § 3-7-21.

In *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61, 63 (R.I. 1971), the Rhode Island Supreme Court rejected the argument that a license renewal may only be based on breaches of R.I. Gen. Laws § 3-5-21[2] or R.I. Gen. Laws § 3-5-23[3] but instead found "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." See also *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269 (R.I. 1984); *Edge-January, Inc. v. Pastore*, 430 A.2d 1063 (R.I. 1981). In *Chernov*, renewal was denied because the licensee's president had supporned perjury of two (2) minors that had been served by the licensee. In *Edge-January*, the renewal was denied as it was found that the

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[2] R.I. Gen. Laws § 3-5-23 states 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.
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> (c) In the event that a licensee is required to hire a police detail and the police refuse to place a detail at the location because a licensee has failed to pay outstanding police detail bills or to reach a payment plan agreement with the police department, the license board may prohibit the licensee from opening its place of business until such time as the police detail bills are paid or a payment plan agreement is reached.

[3] 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.

neighbors' testimony had shown a series of disorderly disturbances happening in front of the licensee's premises that had their origins inside.

In discussing the type of evidence required to be proved for a denial, the Rhode Island Supreme Court found in *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269, 275 (R.I. 1984) as follows:

> We have said at least twice recently that there need not be a direct causational 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. *The Edge-January . . . Manuel J. Furtado, Inc. v. Sarkas*, 373 A.2d 169, 172 (R.I. 1977).

While this is a denial of renewal matter, it is similar to a revocation case in that there needs to be finding of cause. In revoking a liquor license based on disorderly conduct, 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.

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.

IV. THE REASONS GIVEN FOR DENIAL OF RENEWAL

Based on a review of the transcript of the Board's November 19, 2015 hearing, the Board voted to deny renewal based on statements by neighbors at the Board hearing. There was a concern expressed about the quality of life of the neighborhood due to noise, loud music, trash, entertainment without a license, public urination, and broken bottles.[4] Many residents also brought up a shooting believed to be caused by the Appellant; however, the Board previously dismissed that matter so has found that the Appellant was not directly or indirectly responsible for that shooting.

At the Department hearing, it was undisputed that within approximately 50 feet, there is the Appellant and two (2) other liquor licensees and a pizza place. The Appellant has a 1:00 a.m. closing time. One of the liquor licensees has a 2:00 a.m. closing time and the parties were unsure if the other liquor licensee was a 1:00 a.m. or 2:00 a.m. closing. The pizza place is open to 2:00 a.m. and delivers until 4:00 a.m. The Appellant has a capacity of 40-50 people. The 2:00 a.m. establishment is a large restaurant with a higher capacity than the Appellant. The other establishment (undetermined closing time) is smaller than the Appellant.

At the Board hearing, the police lieutenant Remolina stated that for this year there has been four (4) calls for disturbances at the Appellant's: two (2) loud music, an assault, and several parking calls. He stated calls usually come in at 2:00 a.m. Sergeant Tejada stated that there are a lot of complaints about parking on the side streets. He stated that the 2:00 a.m. bar has ample parking for its patrons. At the Department hearing, it was agreed that there was legal street parking on side streets, but there was a complaint of a blocked driveway.

[4] The Appellant raised the issue that at the Board hearing, the Board did not make express findings nor did it articulate a reason for the denial of the renewal application.

At the Board hearing, there was a statement from a neighbor and chair of the neighborhood association, Mr. Henderson,[5] that the Appellant in one (1) year has had 26 complaints while the other bars have had 11 and six (6) complaints to the police. Mr. Henderson read a letter from a nearby resident complaining of the trash, loud music, and traffic on the street and another resident wrote a letter complaining of trash from the Appellant's trash barrel and patrons and the leaving of empty liquor bottles outside. Mr. Henderson also indicated that residents have complained of public urination. At the Department hearing, it was represented that the 26 complaints are different than the police testimony of calls for disturbances. The complaint calls represent service calls to the police.

Beth,[6] the owner of a business across the street, Banagrams, made a statement. She stated that Appellant's patrons park in her parking lot and her employees are tired of broken glass in the parking lot. She also indicated that the Appellant is advertising DJ nights and she does not believe it has an entertainment license. Another neighbor, Megan Sanderson, also made a statement complaining about trash, broken bottles, loud music, and loud noise. Another neighbor, Linda Perry, indicated that the Appellant has had an assault, loud music, larceny, DJ's etc. At the Department stay hearing, letters were received from neighbors that reiterated the statements made at the Board hearing.

At the Department hearing, the Appellant represented that in 2013, it had two (2) entertainment without a license violations. It represented since then it has not had any entertainment without a license including no live DJ's. It represented that when it advertises a "DJ" that references song selections that are preselected by a DJ and then loaded onto an ipod and played at the Appellant and that the DJ is not there in person and if the DJ was there, he or she

[5] First name not given in transcript.
[6] Last name not given in transcript.

would not using a microphone or manipulating any musical equipment. The Appellant represents that any music played is on an ipod. The neighbors referenced the 2013 belly dancer for which the Appellant had been sanctioned. The neighbors also referenced advertisements for hosting DJs, but the Appellant represented that those are all preselected songs played on an ipod.

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. ARGUMENTS

The Appellant argued that there was no evidence linking the trash or bottles to it and that the shooting was dismissed and that there were no entertainment violations. The Appellant argued the police said calls came in at 2:00 a.m. and that it closed at 1:00 a.m. The Appellant argued that there were other late night licensees that closed later than the Appellant right next door to the Appellant. The Appellant argued that at a full hearing, the Appellant would be able to prove that

it closed prior to calls to the police and that its patrons were not in the area and that it did not cause any trash or broken bottles. The Appellant argued that it had substantial likelihood of success on the merits. The Appellant argued that there would be no harm to the public as there are no outstanding discipline or appeals. The Appellant argued that at the very least the *status quo* should be maintained pursuant to the *Department of Corrections* standard and a stay granted. The Appellant argued that if a stay is not granted that it would be put out of business prior to the appeal hearing and decision being issued.

The Board agreed that there had been minimal violations by the Appellant but argued that there did not need to be violations for there to be a denial, but rather it just needed to show that the neighborhood is being disturbed by the Appellant. The Board argued that the testimony would show as it did in *Edge-January* and *AJC Enterprises* there has been a change in the neighborhood that has come about since the Appellant opened.

VII. DISCUSSION

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. The Board argued that it made a determination that the nuisances occurring outside were caused by the Appellant. The Appellant argued that there were at least two (2) other liquor licensees and a third late-night licensee from which nuisances could emanate and that its patrons do not exit with bottles.

The evidence at this Board hearing was of general nuisances believed to be connected to the Appellant. The statements were that there was trash, bottles, loud music, public urination, and noise from the Appellant. There was a belief that the bottles and trash came from the Appellant. No one explained how it was known the trash on the ground or broken bottles came from the

Appellant's and not the other liquor establishments or pizza place. Are the bottles alcohol bottles or soda bottles? The neighbors referenced activities that happened in 2013 and for which the Appellant was sanctioned. The neighbors referenced entertainment without a license. The advertisements for the Appellant indicate that they have nights hosted by DJ's. However, the Appellant represented that those nights are not live DJ's but preselected songs by a DJ and played on an ipod. In addition, the neighbors complained of parking issues, but it is not known whether those parking issues are from the Appellant's patrons.

Based on the evidence presented at the Board hearing, it cannot be determined whether the Appellant has a strong likelihood of success on the merits of its appeal. None of neighbors that made statements were cross-examined. The Appellant did not present any witnesses. The Appellant represented that the only notice it received of the Board hearing was that it was to be hearing on the renewal license, but not the reasons for said hearing. It represented that at a full hearing, it would be able to present testimony that it does not cause noise or trash or broken bottles.[7] 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 has been no evidence of any public protection interest due to violence.[8] However, there is an interest in ensuring that the Appellant is not permitting directly or indirectly disorderly conduct such as loud music, noise, trash, etc. during the pendency of this appeal. Granting a stay maintains the *status quo* pending the appeal.

[7] These are the type of issues that if they are on-going and cumulative may impinge on residents' quality of life. They are also the type of issues that if they are emanating from the Appellant could be mitigated by the Appellant by itself and/ or in conjunction with the neighbors. If they are not emanating from the Appellant, the Appellant could take steps to ensure they do not in future. At the Board hearing, the Appellant suggested to the Board a 90 day administrative review – presumably as a way to demonstrate that it is not causing any problems.

[8] The shooting was dismissed. There was no other evidence of any violence associated with the Appellant. The police referenced a call about an assault, but there is no licensing history regarding any assault or violence nor was there any specific testimony relating to those types of charges.

VIII. RECOMMENDATION

Based on the forgoing, the undersigned recommends that the Appellant's motion for a stay of the denial of License renewal be granted on the following conditions:

1. No entertainment without a license;
2. No live disc jockeys;
3. Only ambient music be played so that the Appellant's music does not go over 50 dB;[9]
4. No one can exit the premises with bottles or cups; and
5. The Appellant will provide proof within ten (10) days to the Board that the trash containers outside are properly maintained so that trash cannot blow out of the trash containers.

A DE NOVO HEARING WILL BE SCHEDULED ON A DATE TO BE DETERMINED BY THE PARTIES.

Dated: 11/23/15

Catherine R. Warren
Hearing Officer

[9] The undersigned based this condition on Article III of Providence Ordinance Code Section 16-93 which states as follows:

> Radios, television sets, and similar devices.
>
> It shall be unlawful for any person within any residential zone of the city to use or operate any radio receiving set, musical instrument, phonograph, television set, or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of neighborhood residents or of any reasonable person of normal sensitivity residing in the area. The operation of any such set, instrument, phonograph, machine or device so as to exceed fifty (50) dBA between the hours of 8:00 p.m. and 7:00 a.m. or so as to exceed fifty-five (55) dBA between the hours of 7:00 a.m. and 8:00 p.m. measured at the property line of the building, structure or vehicle in which it is located, or at any hour when the same is audible to a person of reasonably sensitive hearing at a distance of two hundred (200) feet from its source, shall be prima facie evidence of a violation of this section.

While Allens Avenue is a mixed area and not completely residential, this provides a baseline for ensuring the music stays ambient. See *La Base Sports Bar & Grill LLC v. City of Providence, Board of Licenses*, DBR No.: 10-L-0037 (4/5/11).

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: 11/23/15

Macky McCleary
Director

Entered this day as Administrative Order Number 15-58 on 23rd of November, 2015.

NOTICE OF APPELLATE RIGHTS

THIS ORDER IS REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35-15(a) 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 A PETITION DOES NOT STAY ENFORCEMENT OF THIS ORDER.

CERTIFICATION

I hereby certify on this 23rd day of November, 2015 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 Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, RI 02904 and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920.