

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

Ciello, LLC d/b/a Luv,
Appellant,

v.

City of Providence, Board of Licenses,
Appellee.

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DBR No.: 17LQ008

DECISION

I. INTRODUCTION

This matter arose from an appeal filed by Ciello, LLC d/b/a Club Luv (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding a decision taken by the City of Providence, Board of Licenses (“Board”) on May 24, 2017 to revoke the Appellant’s Class BVX license (“License”).¹ Hearings were held on the appeal on June 23, July 3, and July 7, 2017. The parties were represented by counsel and briefs were timely filed by the parties by July 25, 2017.²

II. JURISDICTION

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

¹ The Appellant was shut between May 8, 2017 through June 6, 2017 so for approximately 30 days. The Appellant re-opened on June 6, 2017 as a stay was issued for its Class BV but not its Class BVX license. A stay was issued on the revocation of the Class BVX on July 10, 2017 so the Appellant’s Class BVX was not in use for approximately 63 days.

² Two orders were issued by the Department regarding the Appellant’s request for stay: May 30, 2017 and July 10, 2017. The hearing was held before the undersigned pursuant to a delegation of authority by the Director of the Department.

III. ISSUES

Whether there were any statutory violations at the Appellant's on May 7, 2017 and if so, what sanction(s) should be imposed.

IV. MATERIAL FACTS AND TESTIMONY

A hearing was held before the Department and this decision relies on the testimony given to the Department by the Board's and the Appellant's witnesses.

Detective-Sergeant Curt Desautels, Providence Police Department ("PPD"), testified on behalf of the Board. He testified that he handles violent crime and monitors gang activity. He testified that he is familiar with one of the men that was identified in the shooting, Terrence Fisher ("Fisher"). He testified that he has arrested him over the years and he is associated with the East Side Posse/Mundo Gang and that he learned of Fisher's gang membership from him. On cross examination, he testified that he did not respond to the incident at the Appellant's and never spoke to any representatives from the Appellant regarding Fisher so he has no knowledge as to whether the club employees knew who Fisher was.

Officer Michael Luke, PPD, testified on behalf of the Board. He testified that he responded to the Appellant between 1:55 a.m. and 2:00 a.m. on May 7, 2017 because of a report of a shooting. He testified that the Appellant is right next to a gas station at a corner of Pleasant Valley Parkway. He testified that when he arrived he observed a male subject lying on the ground at the gas station with what looked like two (2) gunshot wounds to his back. He testified that he found some shell casings and a live round in the gas station parking lot. He testified that there is a metal guardrail between the club and the gas station and the club sits within five (5) feet of the railing and the victim was about five (5) to ten (10) feet from the guardrail. He testified that he learned that there was another shooting victim in the hospital so he went to the hospital and that subject was very

uncooperative. On cross examination, he testified that he has no knowledge whether there were any threats made by the parties inside the club prior to the shooting and he did not know if the person at the hospital had been inside the club.

Detective Patrick Creamer, PPD, testified on behalf of the Board. He testified that he is responded to the club at around 1:55 a.m. on that night for a report of the shooting. He testified that he spoke with the club manager, Andre Samuel (“Samuel”), who told him that he did not know what happened outside, but that there had been an altercation in the VIP area and they turned on the lights and had everyone exit. On cross-examination, he testified that he does not know if any threats were made inside or if anyone threatened to get a gun, or if the subjects involved in the shooting outside were having an altercation inside.

Detective Paul Renzi, PPD, testified on behalf of the Board. He testified that he was called to the scene and arrived around 2:25 a.m. He testified that he found seven (7) cartridge casings, and there were three (3) different types of cartridge cases. See City’s Exhibit Four (4) (diagram where casings found). On cross examination, he testified that he did not know if there were any threats made inside the club or whether the people involved in the shooting had a disturbance inside and he had no knowledge about the club’s response to what happened inside.

Detective Matthew Cute (“Cute”), PPD, testified on behalf of the City. He testified that he obtained the club’s security video. He testified there were three (3) victims who sustained gunshot injuries that night. He testified that inside the club is a main bar area with a bar and a stage in the middle and the exit door. See City’s Exhibits Two (2) and Three (3) (security video). On the Appellant’s security video (channel 1), Cute identified the shooters in the bar. Cute testified that one had a jacket on and his hair tied up in a “man bun” (“Patron One”) and one was wearing a striped white shirt (“Patron Two”) and one was in a baseball cap at the end of the bar and that was

Fisher. Cute testified that in the outside video (channel 9) of the parking lot, it appeared that Patron Two obtained a handgun from another man at 1:49:18 a.m. and that Patron Two put the gun in his waistband and headed back toward the Appellant. He testified that at 1:50:15 a.m., Patron Two went back inside and came out at 1:50:46 a.m. so was inside for 30 seconds. He testified that he never saw, on the video, security in the parking lot monitoring the parking lot.

Cute testified that there are only two (2) shooters that can be seen on camera outside during the shooting, but there were three (3) shooters. He testified that the shooters were Fisher, Patron One, and Patron Two. He testified one of the victims was not in the establishment, but had walked over from the gas station at about 1:52 a.m. He testified that one person punched someone between the parked cars, and then Patron One came around the car and fired at the person which started the shooting. He testified that there were about 20 people outside.

On partial cross-examination, Cute testified that he has no knowledge about what the inside interaction was about and did not see any punches made, and did not know about any threats. He testified that the lights were on inside around 1:48 a.m. He testified that at 148:49 a.m., a staff person went to the left of the bar area and Fisher was not there, but Patron One and Patron Two were. He testified that three (3) staff members came over, including Samuel. He testified that less than a minute after what the focus is on, the two (2) shooters were off camera and Fisher was at the opposite end of the bar. He testified that something happened to the left, but he did not know what and security was dealing with it. He testified that at 149:49 a.m., Patron Two and Patron One were not in that area and at 1:50 a.m., Fisher was not on the video. He testified that at 1:50:48 a.m., Fisher made his way through the bar area and went outside. He testified that security was still addressing what happened inside, and the shooters were not there and were not fighting or arguing or involved with anyone. He testified that at 1:51 a.m., patrons were exiting. He testified

that at 1:52 a.m., Samuel pulled someone out of the crowd and moved toward the back. He testified that he did not see the shooters fight while inside. He testified that on channel 16, at 1:49:16 a.m., Patrons One and Two exited. He testified that he does not know for certain if the handoff was of a gun. He testified that at 1:51 a.m., when Fisher ran across the street outside, security and Samuel were inside dealing with the commotion. He testified that Patrons One and Two had been outside for approximately two (2) minutes during which time Samuel handled the inside issue. He testified that the man who threw a punch went outside at 1:52 a.m. He testified that Fisher was not involved in the punching, shoving, or arguing inside. He testified that the shootings occurred at about 1:53 a.m. Cute continued on direct and testified as to the vestibule where one enters the club and to the left is the bar and to the right is the patio area. He testified that security never went into the patio and channel 14 of the video at 12:40-41 a.m. showed a person on the patio rolling something to be smoked. He testified that at 1:33 a.m. on channel 11, a staff member can be seen smoking while in the vestibule.

Sergeant David Tejada (“Tejada”), PPD, testified on the Board’s behalf. He testified that after one enters the club, to the left is the main bar and to the right is the patio. See City’s Exhibit Six (6) (exterior photo). He testified that channel 11 of the video showed the patio and channel 1 showed the main bar. He testified that there is no hallway between the exit door (in the bar area) which the patrons exited by and the main area. He testified that the concern about the smoking on the patio and the entry vestibule is that there was no security staff and no supervision. He testified that even though the patio is not inside, something still could be going on. He testified that during the disturbance inside, a group is held back, but no staff went outside to monitor the outside except the director of entertainment who apparently was outside when the outside group started to converse, but no one communicated that inside.

On cross-examination, Tejada testified that prior to 1:48 a.m. the lights were on and Patron One was dancing. He testified that at 1:42 a.m., it looked like a staff member was at a fixed post. He testified that at 1:45 a.m. security was moving into position to prepare for exit. He testified that the entrance is not used at the end of the night so that security staff moves to the exit. He testified that security reacted at 1:48:35 a.m. and the lights had been on about five (5) minutes. He testified that there were four (4) security as well as an employee within five (5) feet of the exit. He testified that once Patron Two crossed the threshold of the door, he would be in the club and the video (channel 1) did not pick him up. He testified that there is about 12-15 feet of space not in the camera angle. He testified that he cannot testify as to what the security officer did then. He testified that it is possible that when Patron Two came in, he was confronted by security. He testified that he thinks that staff should have been posted outside the door and not inside. He testified that on the video at 1:49:51 a.m., it looked like a patron exited holding a bottle of alcohol.

Samuel, the general manager, testified on behalf of the Appellant. He testified that prior to this incident, the Appellant had changed its security in order to decrease costs. He testified that after this incident, he spoke with one of the PPD officers and changed the security company and implemented a new security plan. He testified that at the time of the incident, security officers were at fixed posts, including the side door where people exited and while people exited, there was a three-man weave. He testified that there was security to the left of the door, and security to the right to control traffic towards the exit. He testified that one cannot open the exit door from the outside, but if someone tried to go back in, security would be there. He testified that when Patron Two came back in, he (Samuel) was handling the other incident. He testified that if someone tried to come back in, with the security plan then in place, the person would be met with the bouncer's forearm and the question of "who are you, where are you going?" so that security would have

stopped Patron Two. He testified that Fisher was not involved in that incident inside, nor was Patrons One and Two. He testified that he did not see those individuals interact at all that night, nor with the person who threw the punch and he did not know the man who threw the punch.

Samuel testified that 15 minutes before the Appellant closes, the lights are turned on and the music is turned off. He testified that when the music is off, one can hear conversations so that elevated voices are noticeable unlike when the music is on. He testified that night, he heard someone to the left of the bar scream “yo” and it was not Fisher, Patron One, or the puncher. He testified that the only people that should yell are security who yell “have a nice night, everyone get home safe.” He testified when he heard the loud voice, he got off the bar and told the man to stop yelling because when he yelled, security cannot do their job. He testified that the man and his friends were drunk. He testified he took another man to the side at 1:51 a.m. He testified that when security saw him get off the bar, they did not know what was going on, so they come over for back up just in case and it became a bigger discussion with other people wanting to know why he was talking to them so he had to disperse them and say that there is nothing wrong. He testified that there were not any threats. He testified that there was too much explaining to everyone why security had gone over, so he just pulled that person to the side.

Samuel testified that typically on a night, the three (3) man weave does not get broken. He testified when the close is closed, the vestibule security will move and become floaters and there are two (2) fixed security posts. He testified that the weave starts from the far right of the club and pushes everyone toward the exit with security exiting with the patrons. He testified that at the time of the incident inside, closing was starting and security responded to the situation. He testified that closing usually ends with all of the security outside. He testified that he understands he has the responsibility for the parking lot so that security will walk people to their cars. He testified

that the head of entertainment was outside that night. He testified that at the time of the shooting no one was fighting inside. He testified that there was no physical fighting inside and there was no reason that night to call the police. He testified that there is only one exit door and nobody was ejected that night.

On cross-examination, Samuel testified that when the exit door swings open, one sees security inside the door and there is no way to get inside without being confronted by security. He testified that there is a little hallway, two-and-a-half to three (3) feet, inside the exit door. See Appellant's Exhibit Two (2) (his diagram). He testified that night, there were nine (9) to 11 security guards. He testified that when the lights are turned on at 1:45 am., security will say "time to go, have a good night." He testified that when the man yelled "yo," he did not want the other 140 patrons to think that it is ok for them to yell, because he needed his security to be able to yell to get people out. He testified that when he jumped off the bar, security's attention was directed at him and they followed him over so they did not go outside. He testified that at 1:42 a.m., security would not be looking towards the exit since they would still be operating club hours, but the club puts the lights on early because it previously had been fined for taking too long to exit. He testified that 1:50 a.m. is more like the normal exiting time.

On the basis of the video, it can be determined as follows:

- 1:43 a.m. house lights are already on
- 1:45 a.m. security getting into position
- 1:48 a.m. lights are still on; Patron One dancing
- 1:48:49 a.m. staff respond to something to left of bar (near exit); Patron One and Patron Two to left and Fisher at other end of bar
- 1:49:18-21 a.m. Patron Two rushes out; Patron One exit (not together; one in front of other)
- 1:50:06 a.m. Patron Two handoff with another person

- 1:50:15 a.m. Patron Two goes back/tries to go back inside (off camera)
- 1:50:46 a.m. Patron Two comes back outside
- 1:50:48 a.m. Fisher goes outside
- 1:51 a.m. patrons exiting
- 1:51 a.m. Fisher runs across street
- 1:52 a.m. man who threw punch goes outside
- 1:52 a.m. Samuel takes someone from crowd inside to the side
- 1:52:53 a.m. man throws punch at Patron Two; Patron One fires gun – shooting follows

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998).

B. The Appeal before the Department

The hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984) (as the hearing is a *de novo* hearing rather than an appellate review of what occurred at the municipal level, any alleged error of law or fact committed by the municipal agency is of no consequence). See also *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964); *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964). Thus, while there was not a totally new hearing before the Department, the proceeding before the Department is considered a *de novo* hearing. The outcome of an appeal is a decision whether to uphold, overturn, or modify a licensing board's decision. Therefore, this appeal is not bound by the Board's reasons for revocation but whether the Board presented its case for revocation before the undersigned. The undersigned will make her findings on the basis of the evidence before her and determine whether that evidence justifies said revocation.

The Department reviews sanctions to ensure statewide consistency and appropriateness in the situation. It also supports progressive discipline barring the rare and extreme event where revocation may be warranted without prior discipline. It also accepts the principles of comity and deference to the local authorities and their desire to have control over their own town or city. At the same time, pursuant to R.I. Gen. Laws § 3-2-2 and R.I. Gen. Laws § 3-7-21, the Department ensures that tensions between local boards and licensees are settled in a consistent manner. Nonetheless, there is not a mechanical application of sanctions as each matter has its own sets of circumstances. See *C&L Lounge, Inc. d/b/a Gabby's Bar and Grille; Gabriel L. Lopes v. Town of North Providence*, LCA – NP-98-17 (4/30/99). At the same time, a sanction cannot be arbitrary and capricious. The unevenness of the application of a sanction does not render its application unwarranted in law but excessive variance would be evidence that an action was arbitrary and

capricious. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation for a series on infractions). See *Jake and Ella's v. Department of Business Regulation*, 2002 WL 977812 (R.I. Super.) (R.I. Super.) (overturning a revocation of a liquor license as arbitrary and capricious).

An appeal proceeding held pursuant to R.I. Gen. Laws § 3-7-21 is considered a civil proceeding. See *Board of License Commissioners of Tiverton v. Pastore*, 463 A.2d 161 (R.I. 1983). See also *Scialo v. Smith*, 210 A.2d 595 (R.I. 1965). In civil proceedings, unless otherwise specified, the burden of proof generally needed for moving parties to prevail is a fair preponderance of the evidence. *Jackson Furniture Co. v Lieberman*, 14 A.2d 27 (R.I. 1940). See also *Parenti v. McConaghy*, 2006 WL 1314255 (R.I. Super.); and *Manny's Café, Inc. v. Tiverton Board of Commissioners*, LCA TI-97-16 (11/10/97) (Department decision discusses burden of proof for proceedings held pursuant to R.I. Gen. Laws § 3-7-21).

C. Disorderly Conduct and When Sanctions are Imposed

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

(b) If any licensed person permits the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood . . . he or she may be summoned before the board, body, or official which issued his or her license and before the department, when he or she and the witnesses for and against him or her may be heard. If it appears to the satisfaction of the board, body, or official hearing the charges that the licensee has violated any of the provisions of this title or has permitted any of the things listed in this section, then the board, body, or official may suspend or revoke the license or enter another order.

In imposing a sanction on a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. Rather, the Rhode Island Supreme Court held in *Cesaroni v. Smith*, 202 A.2d 292, 295-6 (R.I. 1964) as follows:

[T]he legislature, in enacting the pertinent provision of the statute, intended to impose upon such licensee the obligation to maintain an efficient and affirmative

supervision over the conduct of his patrons in his place to such an extent as is necessary to maintain order therein. It is our opinion that as a practical matter a licensee assumes an obligation to affirmatively supervise the conduct of his patrons so as to preclude the generation therefrom of conditions in the neighborhood of like character to conditions that would result from maintenance of a nuisance therein.

It is to be conceded that this imposes upon a licensee an onerous burden in the management of the licensed premises. It is, however, within the authority of the legislature, the liquor traffic being peculiarly within the police power of the state.

Furthermore, the Court found that “disorderly” as contemplated in the statute meant as follows:

The word "disorderly" as used here contemplates conduct within premises where liquor is dispensed under a license that causes either directly or indirectly conditions in the neighborhood in annoyance of or disturbing to the residents thereof. *Id.* at 296.

Thus, a liquor licensee has the “responsibility to control the conduct of its patrons both within and without the premises in a manner so that the laws and regulations to which the license is subject will not be violated.” *Schillers, Inc. v. Pastore*, 419 A. 2d 859, 859 (R.I. 1980). A liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali v. Smith*, 254 A.2d 766 (R.I. 1969). It is not a defense that a licensee is not aware of the violations or provided supervision to try to prevent violation. While such a responsibility may be onerous, a licensee is subject to such a burden by the legislature and accepted such conditions by becoming licensed. *Therault v. O’Dowd*, 223 A.2d 841 (R.I. 1966). See also *Scialo v. Smith*, 99 R.I. 738 (R.I. 1965). See also *A.J.C. Enterprises; Schillers; and Furtado v. Sarkas*, 118 R.I. 218 (1977).

D. Arguments

The City argued that the Appellant is strictly liable for disorderly conduct on its premises and must supervise its premises so as to preclude disorderly conduct. The City argued that the Appellant failed to maintain supervision so that there was a disturbance inside the premises and another disturbance outside in the parking culminating in a triple shooting. The City did not try to

make a link between the inside and outside disturbance, but rather argued that the parking lot includes premises for which the Appellant is responsible and an inference can be made solely on the basis of the shooting being outside the licensee. The City relied on *Stage Bands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328508 which upheld a Department decision to revoke a Class BV license after a parking lot melee culminating with a shooting and argued that the facts of this case were even more egregious than *Stage Bands*. In addition, the City argued that the evidence shows patrons and staff smoking what appears to be marijuana and a patron exiting with a liquor bottle and a patron with a gun crossing the threshold of the door which leads directly into the main bar area.

The Appellant argued that based on the evidence that the three (3) shooters are never seen interacting with the inside disturbance, it cannot be inferred that the shooting outside arose from activity inside for which the Appellant is responsible. The Appellant argued that the shooters are outside while the inside disturbance is still being handled. The Appellant relied on *CAG Productions LP d/b/a Euphoria v. City of Providence, Board of Licenses*, DBR No. 16LQ022 (4/6/17) in which a licensee was found liable for one incident that spilled outside, but not a later separate incident to argue that the Appellant is not responsible for the outside shooting. The Appellant also argued that the club was in the midst of closing and had not closed at the time of the shooting so that explained why security was still inside.

E. Sanctions Prior to May 7, 2017

The License was transferred to the Appellant on September 16, 2016. The Appellant received a two (2) day License suspension and an \$1,750 administrative penalty for hours of operation violations, sale of tobacco without a license, and permitting smoking in a public place

in March, 2017 for violations in November, 2016. The previous licensee at that location had a ten (10) day suspension in 2015 for what was represented during the stay hearing as a stabbing.

F. Whether there was Disorderly Conduct

In a denial of renewal matter,³ *A.J.C. Enterprises v. Pastore*, 473 A.2d 269, 275 (R.I. 1984) 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.”

In *Stage Bands*, there were three (3) extreme disturbances in one night including two (2) inside and a shooting outside. In citing to *A.J.C.*, the Superior Court in *Stage Bands* upheld the Department’s decision for revocation finding that the shooting outside was connected to events inside the club.⁴ The City argued that based on *Stage Bands*, it can be found that a reasonable

³ In order to suspend or revoke a liquor license, there must be a showing that the holder has breached some applicable rule or regulation. In this matter, the City is relying on the disorderly provisions of R.I. Gen. Laws § 3-5-23. R.I. Gen. Laws § 3-7-6 requires that a denial of a renewal must be “for cause.” For cause has been interpreted to include (among other reasons) the violations of the disorderly provisions. *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61 (R.I. 1971).

⁴ The Court in *Stage Bands* found as follows:

At the hearings, testimony was presented to the DBR's hearing officer. The DBR's decision lays out the facts in extensive detail, and this Court adopts those facts. (*Decision* DBR No. 06-L-0147.) Essentially, those facts are that the Hartford Avenue pedestrian gate was not locked. A disturbance involving at least ten people occurred inside the club at approximately 1:50 a.m. on July 29, 2006. The house lights were not turned on and the loud music was not turned off during the disturbance inside the club. A second disturbance involving at least five people occurred inside the club. The testimony from all police representatives was credible, including that of Officer Mulligan. A third disturbance occurred outside the club on July 29, 2006. This disturbance involved five to eight people who were kicking a subject who was lying on the ground and had been shot in the head. ***

In this case, the record indicates that three disturbances occurred within a matter of minutes: two inside Giza and one outside, culminating in a victim being shot in the head and kicked while his blood pooled on the ground around his head. [footnote omitted] Giza argues in its appeal that there is no connection between the shooting in the parking lot and the club itself. Therefore, it concludes, the DBR revoked the license without any evidence of disorderly conduct perpetuated by those inside Giza.

Even if there were no direct connection between the parking lot and the shooting, the case law of Rhode Island has made clear that a reasonable inference that the cause culminated inside that establishment can be made when a disturbance occurs immediately outside a drinking establishment. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984). “[T]here need not be a direct causal

inference may draw from the events outside to the Appellant when the disturbance occurs immediately outside a drinking establishment. In other words, the City did not argue that the shooting at the Appellant was either directly or indirectly linked to the inside events, but rather argued that the very fact that the shooting occurred immediately outside the Appellant made the Appellant liable.

However, *Cesaroni* speaks of disorderly conduct that occurs within premises where liquor is dispensed under a license that causes either directly or indirectly conditions in the neighborhood that annoy the neighborhood (e.g. disorderly conditions). *A.J.C. Enterprises* speaks of making an inference that the disturbance outside had their origins within the premises. The City argued that the parking lot is part of the premises of an establishment so the Appellant is responsible for the shooting in the parking lot even if it cannot be linked indirectly to something that happened within.

Certainly, a liquor licensee is to maintain security while its patrons are exiting (see below), but in terms of disorderly conduct, case law speaks of the conduct “within” the premises and not the parking lot.⁵ *Stage Bands*, a Superior Court case, found direct evidence between the inside

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.” *Id.* at 275.

In this case, the facts are much stronger than a reasonable inference that the shooting outside was somehow connected to events inside Giza. There was uncontradicted testimony from Detective Green that the victim was inside the club before he was shot. He and his friend engaged in an altercation inside the club and later, outside the club, engaged in another altercation. (Tr. Oct 5, 2006 at 54-56.) Additionally, all testifying witnesses indicated that the victim's body was located inside the fenced in parking lot of the club. Furthermore, there was testimony from many of the witnesses at the DBR hearing that the door to Giza emptied directly into the parking lot. There is only one entrance/exit into the lot. It is more than reasonable for the DBR to conclude that the fights that culminated inside Giza and the shooting that occurred in the fenced in parking lot outside Giza occurred as a result of the activities inside Giza. See, *A.J.C. Enterprises* at 275.

⁵ Interestingly, in looking at the dictionary definitions of “premises,” the definitions vary. *Miriam-Webster* defines premises as “[from its being identified in the premises of the deed] a: a tract of land with the buildings thereon b: a building or part of a building usually with its appurtenances (as grounds) (<http://www.merriam-webster.com/dictionary/premise>.)” The *Free Dictionary* defines premises as “a. Land, the buildings on it, or both the land and the buildings on it. b. A building or particular portion of a building. c. Law The part of a deed that states the details of the conveyance of the property.” (<http://www.thefreedictionary.com/premises>) The *Oxford Dictionary*

events and the shooting outside. In other words, in *Stage Bands*, there did not need to be an inference made of an indirect connection between an inside event and an outside event as permitted by *Cesaroni* and *A.J.C. Enterprises*. Nonetheless, 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.⁶

Similarly, in *Cardio*, the facts surrounding the fight within that bar and killing included that the patrons in the bar argued shortly before closing time and there was a physical altercation inside the bar. A stabbing occurred because of the altercation within the bar and the situation escalated in the bar so that a bouncer sprayed pepper spray or mace. A patron was injured in the bar as there was blood in the bar. A patron at the bar stabbed and killed another patron either inside or outside the bar but the patron was hurt in the bar. The patron died on the street in front of the bar. Thus, in *Cardio*, the victim and the killer physically argued inside the bar which escalated into a killing either inside or just outside the bar.

In *Ocean State Hospitality, Inc. d/b/a Fatt Squirrel v. Providence Board of Licenses*, DBR No.: 16LQ002 (3/31/16), a patron was ejected and a crowd followed the patron outside and milled around with some dispersing and some staying. Eight (8) minutes after the patron was ejected, a shooting occurred (no injuries) and a patron was punched outside. With the large crowd of people exiting the Appellant’s as a result of the ejection, it was reasonable to infer that the shooter was

defines premises as “[a] house or building, together with its land and outbuildings, occupied by a business or considered in an official context.” (http://www.oxforddictionaries.com/us/definition/american_english/premises). See *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980) (relied on a dictionary definition in applying the “ordinary meaning” of “must.”). However, the Supreme Court cases clearly speak of conduct within or inside the premises.

⁶ As the liquor Court cases note, the responsibility of a liquor licensee is very onerous. However, the City’s theory could result in a licensee being responsible for two (2) people walking by a liquor licensee at exit time and fighting outside in the licensee’s parking lot. The case law ensures that licensees are responsible for what happens inside and what happens outside that can be indirectly or directly connected to inside.

connected to the crowd that spilled out of Appellant and that the victim who had left the club was punched as a result of the mass exit from the club.

In *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ022 (6/24/14), two (2) men were ejected for being drunk and belligerent. When they were outside, a car drove by and the driver fired a gun in the air. The police did not identify a victim or suspects. While the two (2) incidents happened closed together, there was not enough evidence to make a finding that the shooting arose from the disturbance in the club. See also *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). Additionally, in *D. Liakos d/b/a Van Gogh v. Providence Board of Licenses*, DBR No.: 16LQ011 (10/31/16), there was no evidence of any disturbance starting inside the bar and spilling outside where it culminated in the fight. In that matter, the Board found that there had been no disturbance inside the club. Thus, 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.

No one disputes that a fistfight that escalates to a shoot-out with three (3) shooters is dangerous and criminal and not that type of activity that anyone would want either near a club or elsewhere. However, the issue before the undersigned is purely a legal issue regarding the Appellant's responsibility, if any, for the shoot-out.

While it was initially thought the house lights were turned on because of the yelling man, the video shows the lights were already on by 1:43 a.m. The testimony was that the Appellant would start the process of exiting early in order to ensure all patrons were out by the required time of 2:00 a.m. Thus, the house lights were on per the exiting protocol and staff were moving into position at 1:45 a.m. The testimony is that a patron yelled "yo" and Samuel got off the bar to see

what was going on because the only voices he wanted to be heard were security moving patrons outside. Other security followed Samuel when he got off the bar. In talking to the patron, Samuel testified other patrons started wondering what was going on and this took a while as he and the staff sorted it out. The video does not show any pushing, shoving, fighting, or even arguing (that can be seen) in the crowd while Samuel was there. However, the staff should have been exiting with the patrons and did not because they were covering Samuel.

Unlike the *Fatt Squirrel* or *Giza*, where the outside fight can be inferred to have happened due to something inside, the evidence here is that what happened inside was separate from outside. Indeed, without the video, it may easily have been inferred that the fight outside spilled over from inside. But a careful review of the inside video of the people involved showed they had no interaction with the incident inside or with each other inside that could lead to an inference that something happened inside. Instead, something happened outside in the parking lot. Before the man threw the punch, there seemed to be jostling among some of the patrons. It could be that the man who threw a punch knew the shooters and did not like one or all of them and saw them inside that night and decided to punch one of them when they got outside. Or it could he saw them all for the first time outside and decided to punch one of them. It could be that the man who threw a punch had never seen any of the shooters before and threw a punch at a stranger because the stranger said something inside or outside or that the man who threw the punch was an idiot and/or drunk. All those reasons are speculative and cannot be tied into any of the evidence presented.

It is not enough that the people who fought outside were 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 *Salacruz, LLC d/b/a Sky Lounge v. City of Providence Board of Licenses*, DBR No. 14LQ046 (11/25/14); and *El Tiburon Sports Bar, Inc.*

The case law is consistently clear that a liquor licensee is responsible for activity inside and activity outside that can be directly or indirectly inferred to arise from the inside. In this matter, there is no evidence that the fights outside can be linked indirectly or directly to any occurrence inside the Appellant. Therefore, there can be no finding that the Appellant violated R.I. Gen. Laws § 3-5-23.

G. Conditions of Licensing

R.I. Gen. Laws § 3-5-21 provides 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 . . . for:

(1) Breach by the holder of the license of the conditions on which it was issued;

or

(2) Violation by the holder of the license of any rule or regulation applicable;

or

(3) Any fraudulent act or "material misrepresentation" made by an applicant for a license or a licensee, including, but not limited to, any misrepresentation or information upon which the licensing board reasonably relies in rendering any decision concerning a license, licensee, or establishment; or

(4) Breach of any provisions of this chapter; or

(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.

While the Appellant argued that the City was speculating as to what was being smoked inside, if anything, the video did show staff and patrons smoking. Arguably, the patio is not inside, but the vestibule is inside and the staff was smoking inside – whether legal or illegal substances –

where smoking is prohibited. In addition, a patron left with a bottle. The parties disputed it was an alcohol bottle, but it is unlikely that it was a soda bottle or water bottle. Finally, and of significance, because of a very minor incident of a yelling man, the director of entertainment was the only staff member outside while the patrons exiting. The testimony was that the staff member(s) should end up outside as patrons exit. The Appellant argued that the shooting occurred at 1:53 a.m. during the exit time so that it is not to be expected all security would be outside by then. However, the testimony was that security was diverted by a yelling man so no one but the entertainment staff member was in the parking lot as patrons exited. Patrons were exiting as the lights were on and the very reason that Samuel testified that he did not want a shouting patron was that only staff should be shouting as they pushed patrons to exit.

There was also the serious issue of Patron Two trying to re-enter the Appellant. He is not seen on the video after re-entering. The Appellant argued that he was stopped by security and turned away right inside the door. The City argued that the Patron Two should have not crossed the threshold of the door. A review of the video also showed other patrons walking back into the club. The attempt by Patron Two who apparently had obtained a gun outside (after rushing outside) to re-enter the club is troubling even if he apparently did not succeed in getting very far inside and is back outside within 30 seconds.

While the Appellant argued that the smoking and the patron exiting with a bottle were speculative, the fact remains that security was unable to exit to the outside with the patrons because of a yelling patron. If the yelling patron had been more than a yelling patron and there was instead a physical fight, then security would have been stretched even more as the yelling patron stretched them as it was. Maintaining enough security and providing security (so no smoking, no exiting with liquor bottles, no re-entry at closing) is a condition of liquor licensing. While there is not

enough evidence to infer that the shooting outside is indirectly linked to something inside, there is more than enough evidence to find that the Appellant is in violation of R.I. Gen. Laws § 3-5-21 for failing to maintain and provide enough security inside and while patrons exited at closing time.⁷

H. What Sanctions are Justified

The Department has a long line of cases regarding progressive discipline and upholding the same. *Pakse Market Corp.* The progressive discipline imposed on a licensee depends on the violations and the circumstances of a licensee's violation(s). The Department has the authority to suspend or revoke the Class BV/BVX license as well as impose administrative penalties.

In *J. Acqua, Inc. d/b/a Acqua Lounge v. City of Providence*, Board of Licenses, DBR No. 16LQ014 (11/28/16), the licensee had two (2) administrative penalties within two (2) years prior to the incident and two (2) separate suspensions for disorderly conduct within two (2) years prior to the incidence. In that matter, a patron brought a gun into the premises and fired it into the ceiling. The licensee received a 60 day suspension of its Class BV license and revocation of its Class BVX license.

In the June, 2014 *Moe's Place, Inc. d/b/a D'Noche*, the licensee received a two (2) day suspension for disorderly conduct when two (2) drunk patrons that had fought inside (but not physically) were escorted outside where they were belligerent but not physical. That licensee had recently had a five (5) day suspension for nuisance and a seven (7) day suspension for various violations such as overcapacity and drinks advertising and a disturbance so that a two (2) day suspension was imposed for the disorderly conduct despite it not being physical. Subsequently, the licensee had its fourth disorderly conduct violation in less than two (2) years when a patron brought

⁷ In *D. Liakos*, the City argued that a club had to escort party bus patrons to their buses parked down the street from the club. The decision rejected that argument as there were no conditions or ordinances to that effect. In that matter, there was a police detail and security outside while patrons exited. The fights that took place were down the street and were not connected indirectly or directly to anything that happened inside. In contrast, in this matter, there was lax security inside and then security was unable to exit with the patrons as planned because of a very minor non-physical incidence inside.

a knife inside the premises despite security pat-downs and stabbed another patron. As a result, the Class B license was suspended for 60 days and the Class BX license was revoked.

In this matter, there has not been any disorderly conduct violations under this owner (but there was one in 2015 under the prior owner), but there has been a suspension this year for other violations. In this matter, there was no disorderly conduct inside and no inference could be made linking either directly or indirectly the events inside to the events outside. However, in light of the serious violations regarding security (analogous to *Gabby's* where severe disorderly conduct merited a long suspension), a long suspension is merited. The Class BV license is suspended for 30 days. The late night Class BVX is suspended for 180 days.

VI. FINDINGS OF FACT

1. On or about May 14, 2017, the Board issued a decision revoking the Appellant's Class BVX license in relation to the events of May 7, 2017 at the Appellant's premises.

2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision and requested a stay.

3. The Department issued orders on the motions to stay on May 30 and July 10, 2017 in relation to the discipline imposed by the Board on the Appellant.

4. A hearing on this matter was held on June 23 and July 3 and 7, 2017. Briefs were timely filed by July 25, 2017.

5. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

The Appellant did not violate R.I. Gen. Laws § 3-5-23, but violated R.I. Gen. Laws § 3-5-21 on May 7, 2017.

VIII. RECOMMENDATION

Based on the forgoing, the Hearing Officer recommends that the Class BV license be suspended for 30 days and the Class BVX license be suspended for 180 days. The Class BV license suspension has been served. The Class BVX license suspension shall commence on the 31st day from the execution of this decision.⁸ The police detail on Fridays and Saturday nights is already in place and shall continue.

Dated: 9/12/17

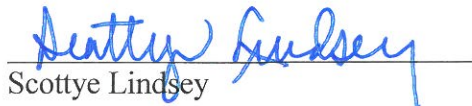

Catherine R. Warren
Hearing Officer

ORDER

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

ADOPT
 REJECT
 MODIFY

Dated: 9/14/17


Scottye Lindsey
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.

⁸ The Appellant has already served 63 days for the Class BVX license suspension so the 180 days is reduced to 117 days.

CERTIFICATION

I hereby certify on this 14 day of September, 2017 that a copy of the within Order was sent by email and first class mail, postage prepaid, to the following: Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903, Nicholas Hemond, Esquire, DarrowEverett, LLP, One Turks Head Place, Providence, RI 02903, and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 02889 and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920

