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

The Vault, LLC, **Appellant,**	:	
v.	:	**DBR No.: 16LQ008**
City of Providence, Board of Licenses, **Appellee.**	:	

DECISION

I. INTRODUCTION

This matter arose from an appeal filed by The Vault, LLC ("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 July 21, 2016 suspending the Appellant's Class BVX liquor license for ten (10) days and its Class BX liquor license for 60 days[1] and also imposing a mandatory police detail on Friday and Saturdays from 10:00 p.m. to 2:00 a.m. and imposing an administrative penalty of $2,000. The Appellant requested a stay which was partially granted by the Department by order dated July 26, 2016. A hearing was held on August 12, 2016 before the undersigned[2] and the parties rested on the record.[3] The parties were represented by counsel.

[1] The ten (10) day suspension includes five (5) days that were already served. The Board indicated at hearing that the 60 day suspension would be for 60 consecutive days.

[2] Pursuant to a delegation of authority by the Director of the Department

[3] The Department transcript was received on September 7, 2016.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-2, 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.*

III. ISSUES

Whether there was disorderly conduct pursuant to R.I. Gen. Laws § 3-5-23 at the Appellant's on June 21, 2016 and if so, what sanction(s) should be imposed.

IV. MATERIAL FACTS AND TESTIMONY

The parties relied on the record from the Board regarding the June 21, 2016 incidence except that the City also presented further evidence by entering a video in evidence.

At the Board hearing, Officer Tracie Miller, Providence Police Department, testified on behalf of the City. She testified that on June 21, 2016, she responded to a call about a shooting outside of the Appellant. She testified that the Appellant is at the intersection of Atwells Avenue and Lily Street and across the street is a parking lot for the Appellant's patrons. She testified that she spoke to the victim who was grazed on his leg by the gun shot. She testified that the victim told her that he heard the shooter outside arguing with a woman, and then heard the shots and that is when he felt the bullet. In questioning from the Board, she testified that the victim did not know the shooter or the woman and had not argued with either of them.

At the Board hearing, Detective Ricardo Silva ("Silva"), Providence Police Department, testified on behalf of the City. He testified that when he responded to the Appellant on June 21, 2016, he was told by one of the security guards that the shooter had not entered the Appellant because he had refused to be patted down. He testified that the next day, he spoke to the victim and the victim told him that he (victim) had been inside and had seen the shooter inside and the

shooter was ejected at around 12:30 a.m. He testified that the victim said he (victim) left about 1:00 a.m. and the shooter was outside and seemed intoxicated.

At the Board hearing, Sergeant David Tejada, Providence Police Department, testified on behalf of the City. He testified as to the video taken from a business on Atwells Avenue opposite the Appellant. This video was also shown at the Department hearing and is discussed below. See City's Exhibit One (1) (video).

The Board hearing closed on June 27, 2016 with a decision to enter, but on July 6, 2016, the City moved to reopen the hearing which the Board granted.

Before the Board, Jose Ortiz ("Ortiz") testified on behalf of the City. He testified that he appeared pursuant to a subpoena and works directly as security for the Appellant and does not work for a security company. He testified that the shooter had initially said that he did not want to be searched when he tried to enter the club, but left and then came back and was searched and entered the club. He testified that about an hour later the owner's cousin came to him and said that he needed someone escorted out and that person was the shooter. He testified that the shooter seemed intoxicated or on drugs and when he went to escort him out, the shooter tried to take a swing at the owner's cousin. He testified that the shooter tried to get back in the club, but was told no and then the shooter said he would not leave until his "girl" came out (7/14/16 Transcript at p. 4). He testified that that he got the woman and then went back to his post and did not know how long the shooter was outside before the shooting.

Ortiz testified that he told the police that the shooter had never actually entered the club, but the shooter was in the club and he said otherwise to the police because he "did not want to get my job in jeopardy, and you know." (*Id.* at 5). He testified that that someone told him to tell the police that the shooter was not inside, but that person was not Miguel Garcia ("Garcia") (the listed

owner). He testified that he did not know the name of the person because he has worked at the Appellant for only one (1) month, but the person was "like one of the owners." (*Id.* at 6). He testified that while his written statement to the police might say it was Miguel Garcia who told him to say that the shooter was not inside, he told the police that an owner had told him to say that and not the person's name. On cross-examination, Ortiz testified that his police statement says that he was told by the "owner/boss Miguel Garcia" to say the shooter was not in the club. He testified that he never told the police Garcia's name, but rather just said "owner and boss." He testified that Silva took his statement.

Silva further testified on behalf of the City. He testified that when he interviewed Ortiz, Ortiz told him that the owner had told him to say the shooter had not been inside so he (Silva) looked up the Appellant's owner and the only owner's name was Miguel Garcia. He testified that Ortiz signed the statement after he had an opportunity to read it.

At the Department hearing, Tejada testified on behalf of the City. He testified that on the video the two (2) men in front of the Appellant are security and one was Ortiz. He testified that it can be seen that the shooter is allowed in the club after a pat down. He testified that when the shooter shot the gun, the bullets would have gone across Atwells Avenue at an angle because of the way he was shooting and because the woman was grabbing his arm.

The video was shown at the Department hearing and reviewed by the undersigned. The video shows the entrance to the Appellant on the right and two (2) security staff in front of the entrance and across Lily Street to the left and opposite the Appellant is the parking lot with an entrance on Lily Street. On June 20, 2016, the shooter and his female friend drove and parked in the parking lot and went inside the Appellant about 11:04 p.m. The shooter was not refused entry, but was patted down. At about 12:27 a.m., the shooter is seen being escorted out of the club.

Shortly after, his female friend comes out. They talk to bouncer and are one point in the middle of the street. Another female friend also comes out and joins them. They are all talking to the bouncer; though, at one point the group separates briefly. At 12:31 a.m. the other woman goes back inside and the shooter's friend does too, but she then comes back outside. At 12:32 a.m., he and the female friend are outside the Appellant in front of the doors. At 12:34 a.m., the shooter walks to the corner and then goes back and it looks like he tries to back inside. At 12:34 a.m. and 12:35 a.m., the shooter is talking to the bouncer and at 12:35 a.m., his female friend goes back inside. From 12:35 a.m. to 12:41 a.m., the shooter is in front of the doors and talking to the bouncer at points. At 12:37 a.m., he speaks to the bouncers and gestures toward the door. At 12:41 a.m., he steps off the curb and at 12:42 a.m., he walks across the street into the parking lot where he apparently urinates in the bushes. He returns to the front of the building at 12:43 a.m. and at 12:44 a.m., he looks like he tries to get back inside. At 12:45 a.m., his female friend comes out and they go to the parking lot to the car and at 12:46 a.m., the shooter with the female friend pulling on him walks back across the street and shoots his gun. His friend pulls on him and he falls twice while going back across the street. They get in the car and leave at 12:47 a.m.

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 suspension but whether the Board presented its case for suspension before the undersigned. The undersigned will make her findings on the basis of the evidence before her and determine whether that evidence justifies said suspension and penalty.

The Department reviews sanctions to ensure statewide consistency and appropriateness in the situation. It also supports progressive discipline barring the rare and extreme event where revocation may be warranted without prior discipline. It also accepts the principles of comity and deference to the local authorities and their desire to have control over their own town or city. At the same time, pursuant to R.I. Gen. Laws § 3-2-2 and R.I. Gen. Laws § 3-7-21, the Department ensures that tensions between local boards and licensees are settled in a consistent manner.

Nonetheless, there is not a mechanical application of sanctions as each matter has its own sets of circumstances. See *C&L Lounge, Inc. d/b/a Gabby's Bar and Grille; Gabriel L. Lopes v. Town of North Providence*, LCA – NP-98-17 (4/30/99). At the same time, a sanction cannot be arbitrary and capricious. The unevenness of the application of a sanction does not render its application unwarranted in law but excessive variance would be evidence that an action was arbitrary and capricious. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation for a series on infractions). See *Jake and Ella's v. Department of Business Regulation*, 2002 WL 977812 (R.I. Super.) (R.I. Super.) (overturning a revocation of a liquor license as arbitrary and capricious).

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

C. Arguments

The City argued that there was a shooting outside the Appellant by a patron. The City argued that the Appellant initially lied to the police about the shooter. The City argued that the Appellant just let the shooter stay in the vicinity for 20 minutes while he was intoxicated and when he had been escorted out of the club for fighting. The City argued that the security could have called the police if the shooter had refused to leave. The City argued that the Appellant previously

had a four (4) day closure and an administrative penalty last year, and the sanction for this incident is reasonable in that it is a ten (10) day suspension and then a BX suspension for 60 days and administrative penalty and police weekend detail. The City argued that the suspension punishes the licensee and allows the licensee time to assess its security on a go forward basis.

The Appellant argued that he agreed with having a police detail for 60 days with a review by the Board. The Appellant argued that there is no saying that the shooter would have been stopped even if the police had been called. The Appellant argued that the shooter was outside for 15 to 17 minutes and was not aggressive. The Appellant argued that the police inserted Garcia's name into Ortiz' statement without making such a notation on the statement, and while Ortiz testified that someone told him to lie, there is no evidence it was Garcia. The Appellant argued that a police detail for 60 days is enough penalty.

D. Sanctions Prior to June 21, 2016

The Appellant has been licensed since December 30, 2013. In August, 2014, it had an administrative penalty of $2,250 imposed for various violations (none were disorderly). In July, 2015, the Appellant had its License suspended for four (4) days and an administrative penalty of $1,000 imposed for entertainment without a license and using an unlicensed promoter. In May 2016, an administrative penalty of $650 was imposed for violating hours of operation. See certified record.

E. When Sanctions are Imposed

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 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.
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> 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).

The Department has a long line of Department 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 sanctions imposed for R.I. Gen. Laws § 3-5-23 vary depending on the type of disorderly conduct. Very serious and egregious violations that involve weapons and/or serious assaults could result in a revocation of license. E.g. *Cardio Enterprises d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (license revoked for murder that arose at bar). A long suspension may be imposed for severe disorderly conduct. E.g. *C & L Lounge, Inc.* (30 day suspension for severe disorderly conduct but not so severe as to merit revocation).

F. The Violation

In a denial of renewal matter,[4] *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 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."

In *Stage Bands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328508 (R.I. Super.), there were three (3) extreme disturbances in one night including a shooting. In citing to *A.J.C.*, the Superior Court in *Stage Bands* upheld the Department's decision for

[4] 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).

revocation finding that a reasonable inference could be made that the shooting outside was connected to events inside the club.[5]

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

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[5] The Court 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. Rescue vehicles could not enter the parking lot of Giza because the entrance was impassable due to the bottleneck of cars. Paramedics had to park the rescue vehicle on Hartford Avenue and carry the stretcher into the parking lot. At least four people were arrested at the Appellant's premises or in the vicinity of the premises on July 29, 2006. All five police officers assigned to District 5 responded to the scene on July 29, 2006. Officers from the gang unit, representative from the narcotics unit, NRT units, and District 2 vehicles responded to the scene on July 29, 2006.
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> 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.
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> 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 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." *Id.* at 275.
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> 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.
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> See *Stage Bands.*

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 this situation, the shooter was a patron who had been escorted out of the Appellant for being disorderly inside. He was outside for approximately 18 minutes before he shot the victim. While outside, he did not go to another business or leave the vicinity. Rather he stayed for most of that time talking to the bouncers and apparently trying to go back inside the bar. Thus, there is an issue of whether the shooter's actions 18 minutes after being escorted outside where he did not continue to engage in any physical disorderly conduct, but rather stayed in front talking to the bouncers and apparently trying to return back inside can be indirectly inferred to his disorderly conduct inside and subsequent ejection.

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 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).

Unlike *Moe*'s where there were two (2) men arguing who were thrown out coincidentally at the same time that the car drove by, it is known in this matter that the patron who was ejected was the shooter who had been disorderly inside and who never left the vicinity of the Appellant after being ejected and tried to re-enter the club. The Appellant argued that something did happen that night, but that the Board's penalties are excessive.

If a patron leaves a Class B liquor licensee on his or her own steam without incident inside and then walks down the street for a coffee and then returns and fights with the bouncers, it would be hard to make a link that the licensee would be indirectly responsible for that fight and said patron would no longer have been a patron. Here, there is a lag time between the Appellant's ejection and the shooting which could raise the issue of when is a patron no longer a patron. However, here the shooter was patron who never left the outside of the premises and tried to get back in (more than once) after being ejected for fighting so that an indirect link can be made from his actions inside to his actions outside.

In addition to the actions of the shooter, there is the issue of Ortiz's testimony. He denied he was told by the listed owner, Miguel Garcia, to lie to the police. Silva testified that he assumed that Ortiz meant Garcia when Ortiz said owner so that he (Silva) added Garcia's name to the police report. Ortiz testified he thought it was an owner but did not know who it was. Someone, whoever it was, told Ortiz to lie to the police. Whether it was the actual owner or perhaps a manager, Ortiz thought the person had some kind of authority to tell him what to say. While Ortiz may have worried about his job, the fact is that the City cannot countenance licensees that are not truthful.

The Appellant is responsible for Ortiz's lie to the police whether or not he was directed by an unknown person to lie or not. A licensee has the obligation to conduct its business to comply with the law and is responsible for violations of the law even if it had no knowledge of such violations. *Scialo v. Smith*, 210 A.2d 595 (R.I. 1965). Such a statement to the police violates R.I. Gen. Laws § 3-5-21(b)[6] since it is axiomatic that a condition of licensing would include being honest when questioned by the police during an investigation of a shooting.

G. What Sanctions are Justified

From *Cesaroni* in 1964 to *Schillers* in 1980 up until today, a liquor licensee is responsible for activities inside and outside its licensed premises. It does not matter how well a liquor licensee supervises such responsibilities since even the most responsible supervising licensee is still responsible for disorderly conduct. See *Therault*. As discussed above, the sanctions imposed for R.I. Gen. Laws § 3-5-23 vary depending on the type of disorderly conduct.

In *JJAM Sports, Inc. d/b/a LaCabana Night Club Sports Bar and Grille, Inc. v. Lincoln Board of License Commissioners*, LCA-LI-99-05 (12/27/99), the Department upheld a two (2) day suspension for a fight inside the bar and a second fight outside in the parking lot with the patrons refusing to leave and police (including from the adjoining community) being called to clear the patrons and a police officer had a beer bottle thrown at him. More recently, in *DL Enterprises d/b/a East Bay Tavern v. East Providence City Council*, DBR No. 14LQ009 (4/28/14), the

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[6] 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.
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> (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.

Department reduced a revocation to a 14 day suspension for fighting inside the bar where there was a physical altercation and a stabbing but no positive identification of a weapon. In *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ022 (6/24/14), the licensee received a two (2) day suspension for disorderly conduct when two (2) drunk patrons that had fought inside (but not physically) were escorted outside where they were belligerent but not physical. That licensee 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 a knife inside the premises despite security pat-downs and stabbed another patron. As a result, the Class B license was suspended for 60 days and the Class BX license was revoked. See In *Moe's Place, Inc. d/b/a D'Noche v. City of Providence, Board of Licenses*, DBR No. 14LQ054 In *Curbside, Inc. v. Cumberland Town Council*, DBR No. 09-L-0086 (9/17/09), a two (2) day suspension was imposed on a disturbance where a patron was thrown out after being verbally loud inside and then outside pushed and shoved other patrons. In *Ocean State*, a 14 day suspension was imposed for the shooting (which did not hit anyone) and the punching of a patron.

The Appellant previously had its License suspended, but not for disorderly conduct. Here, there was disorderly conduct – a shooting – by a patron who was ejected and did not leave. Despite the lag time between the ejection and the shooting, the Appellant is indirectly responsible for the patron's actions as the patron was ejected, did not leave the front of the club, and tried to re-enter more than once. At the same time, the Appellant's staff member lied to the police about whether the shooter was inside the club. Apparently, someone who Ortiz believed had the authority to do so directed him to lie to the police. This may not have been Garcia, but it was someone Ortiz thought

was an owner or like an owner. As discussed above, even if Ortiz had not been told to lie, the Appellant would still be responsible if he did lie. Telling the police that the shooter was not inside was a way for the Appellant to try to avoid any responsibility for the shooter's actions; however, such wrong information could have also impacted any police investigation into the actual shooting.

Based on the forgoing, the ten (10) day suspension of the BVX license is upheld. The 60 day suspension of the late night license is upheld but will be considered to be concurrent with the ten (10) day suspension. The weekend police detail is imposed for 60 days with a review to be held by the Board after 60 days in order to determine whether to continue the detail or not.

H. Administrative Penalties

The Appellant raised the issue of the administrative penalties imposed by the Board. Pursuant to R.I. Gen. Laws § 3-7-21, the Department does not have authority to hear appeals of fines. However, the Superior Court found that the Department has implied jurisdiction to review administrative fines imposed by local boards pursuant to R.I. Gen. Laws § 3-5-21. See *The Rack, Inc. d/b/a Smoke v. Providence Board of Licenses*, et al. CA No. PC 2011-5909 (7/22/13). The Court found that the Department did not have to apply a *de novo* standard of review to appeals of administrative fines but that the Department must review the record and articulate and document a substantial, non-arbitrary rationale for invoking its discretion to dismiss appeals of fines imposed by local licensing boards and that the exercise of such discretion must be reasonable. The Court further found that if the monetary fine imposed on a licensee by a local liquor licensing board is within statewide limits set by statute then such a finding by the Department may be sufficient basis for the Department to dismiss a licensee's appeal. *Id.* at pp. 14-17.

R.I. Gen. Laws § 3-5-21(b) provides that a first offense by a liquor licensee shall be fined $500 with the fine for each subsequent offence not to exceed $1,000. R.I. Gen. Laws § 3-5-21

establishes minimum fines for violations. Thus, the first offense is for any offense of the liquor licensing law and the subsequent offense is for any subsequent offense of the liquor licensing laws rather than pinpointing whether the violation is the first or subsequent offence of a specific statutory or regulatory violation. This interpretation is supported by the fact that the statute provides for a clean slate for all offenses if the licensee has not had any offenses for three (3) years. In other words, the first offense of the liquor statute cannot be fined more than $500 with each subsequent offense of the liquor licensing law not being fined more than $1,000 but if the licensee has no offenses for three (3) years, the clock is re-set and any violation would be considered a first offense.

In this matter, the City imposed an administrative penalty of $2,000 consisting of $1,000 each for a violation of R.I. Gen. Laws § 3-5-21 and R.I. Gen. Laws § 3-5-23.

The Appellant already had administrative penalties imposed within three (3) years prior to these violations so that an administrative penalty of $1,000 per violation is appropriate. In this matter, the Appellant violated R.I. Gen. Laws § 3-5-21 (violate conditions of licensing) and R.I. Gen. Laws § 3-5-23 (disorderly) for each incident. Therefore, the administrative penalty of $2,000 ($1,000 for each violation for each incident) is upheld as being within the statutory mandates for penalties.

VI. FINDINGS OF FACT

1. On or about July 21, 2016, the Board issued its decision to suspend the Appellant's License for ten (10) days, suspend Appellant's class BVX license for 60 days, impose a mandatory police detail on Friday and Saturdays, and impose an administrative penalty of $2,000.

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

3. By order dated July 26, 2016, a partial stay was issued by the Department in relation to the discipline imposed by the Board on the Appellant.

4. A hearing on this matter was held on August 12, 2016 with the parties resting on the record.

5. The parties made oral closings.

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

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

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

2. Based on the evidence, the Appellant violated R.I. Gen. Laws § 3-5-23 and R.I. Gen. Laws § 3-5-21 on June 21, 2016.

VIII. RECOMMENDATION

Based on the forgoing, the Hearing Officer recommends that the ten (10) day License suspension and 60 day late night license suspension be upheld, but that the suspensions run concurrently. The weekend police detail is imposed for 60 days with a review to be held by the Board after 60 days in order to determine whether to continue the detail or not. Finally, the administrative penalty of $2,000 is upheld.[7] The suspensions shall begin on the 31st day following the execution of this decision.[8]

Dated: September 13, 2016

Catherine R. Warren
Hearing Officer

[7] As the Appellant's $2,000 administrative penalty was not stayed, it should have been paid already. However, if for some reason, it has not been paid, it shall be due the 31st day after the execution of this decision.

[8] The Appellant has already served five (5) days of its ten (10) day License suspension so it has also served five (5) days of the 60 day suspension. Thus on the 31st day, the Appellant shall serve the further five (5) day suspension of its ten (10) days BVX license suspension which will include five (5) days of the 60 day suspension and then to complete the 60 day late night ("X") license suspension, it will serve 50 more days of the late night suspension.

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: 9/14/16

Macky McCleary
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 14th day of September, 2016 that a copy of the within Decision was sent by first class mail, postage prepaid to Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904 and Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903 and by hand-delivery to Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920.