STATE OF RHODE ISLAND

TOWN OF EAST GREENWICH **BOARD OF LICENSE COMMISSIONERS**

In re: Low Key, LLC,
d/b/a LowKey Café,

Respondent.

RESPONDENT'S MOTION FOR DISQUALIFICATION
OR (ALTERNATIVELY) HEARING CONTINUANCE

Respondent

Low Key, LLC,
d/b/a LowKey Café

By Its Attorneys:

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I. INTRODUCTION

"It is easier to smash an atom than a prejudice."

- Albert Einstein

Einstein was not referring to this Board. But he could have been. One of our smartest Americans, Einstein generally referenced an immutable reality that reared its vile head at this Board's recent Hearing on this matter. That reality can most aptly, albeit appallingly, captured by some of this Board's unsmart words themselves:

"Whether or not the [Respondent is] found guilty; we know[s] they are!"

- Town of East Greenwich Board of License Commissioners, by Caryn Corenthal, Member (January 29, 2024 Hearing, at 1:36).

So unconscionable was this erroneous exclamation emanating from this Board – which is, first and if nothing else, expressly dutybound to refrain from exactly that type of prejudicial pre-Hearing adjudication – that this Board's counsel was compelled to immediately and unprecedently admonish this Board:

> "Whoops! I'd be careful.
>
> "I'd caution you not to pre-judge anything. Okay? You've got to hear the evidence!" (January Hearing, at 1:36) (emphases added).

This Board's counsel saw the need to repeat himself – perhaps aware this atomic prejudice could not be "smashed":

> "So, we're not going to prejudge any … nothing's been presented…. This is a quasi-judicial proceeding." (Id.)

This shocking prejudice was on repeated display during that same January Hearing. Board Member Englehart reiterated the above-guilty-without-being-proven-guilty "finding". The Respondent was again unsolicitedly excoriated by Board Member Corenthal:

> "[You] ha[ve] been a serial violator and a dangerous one, serving minors."
> (January Hearing, at 1:17:26)

This outrageous claim – without any basis in law or fact – is categorically false. The Respondent did not serve alcoholic beverages to minors. So brazenly extreme was its falsity that this Board again required immediate admonishment – that time by the Town Solicitor, on the record (id., at 1:19:40).

A not-guilty verdict was entered, just weeks ago, in this Town's own Municipal Court, on the minor-service charge – which this same Town Solicitor unsuccessfully attempted to prosecute against the Respondent's manager. Perhaps most tragically disturbing is that this specious minor-service claim is the very subject of this matter. More extreme bias/prejudice is impossible to fathom. Board Members' inability to refrain from similar prejudicial "findings" insidiously spread throughout the January Hearing (and likely beyond), notwithstanding these repeated admonishments to refrain therefrom.

The foregoing exemplar exchanges, just a few of many, are emblematic of this current Board's blanket prejudice, bias, unfairness and partiality with respect to the Respondent. Any one of these predispositions constitutes an independent basis to disqualify a quasi-judicial Board member(s). Every one of these predispositions has been on full display during this Board's consideration of this matter. Their collective existence overwhelmingly warrants disqualification

of these two aforementioned Board Members – who are plainly incapable of fairly adjudicating this matter.

Anything short of these Members' disqualification would run afoul of one of the bedrock principles upon which our judicial system rests, as articulated by one of our first smartest Americans:

> "No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity." James Madison, Federalist No. 10, The Federalist Papers.

These Board Members have taken up the prejudicial prosecution of the Respondent as their own cause. To permit these Board Members – who have blatantly already found this Respondent "guilty", despite the almost-laughable procedural unavailability of such a finding – is quite candidly un-American. Not to be outdone, even Chevy Chase finds incorruptible Due-Process no laughing matter:

> "[T]his isn't Russia. Is this Russia? I didn't think so." Ty Webb, Caddyshack (1980).

From virtually any American angle, these Board Members' prejudicial, biased, partial and unfair predisposition towards this matter – evidently incapable of eradication – begs just one inevitable result: Disqualification.

II. GERMANE FACTS AND PROCEDURAL HISTORY

1. On November 27, 2023, this Board of License Commissioners held a Hearing regarding the renewal of the Respondent's liquor license (the "November Hearing").
2. At the November Hearing, this Board, inter alia, renewed the Respondent's liquor license, effective December 1, 2023 through January 8, 2024, pending disposition of the then-scheduled January 4, 2024 Trial of the Town of East Greenwich Municipal Court with respect to the Respondent's manager, William Laliberty, infra ¶9-10.
3. The Municipal Court Trial was subsequently scheduled for February 1, 2024.
4. The Respondent received a December 22, 2023 Notice (the "December Notice") of a January 29, 2024 Hearing before this Board (the "January Hearing").
5. At the January 8, 2024 Hearing, the Respondent's liquor license, inter alia, was renewed through the January Hearing.
6. The December Notice directed the Respondent to show cause why this Board should not impose penalty(ies) with respect to seven alleged violations (including sixteen sub-items).
7. Prior to the January Hearing, respective counsel for the Town of East Greenwich and Respondent reached an agreement regarding the proposed disposition of the allegations/Hearing.
8. This Board rejected the proposed settlement agreement at the January Hearing.
9. At the January Hearing, this Board renewed the Respondent's liquor license through November 30, 2024, and the Show-Cause Hearing would be scheduled for some to-be-determined future date.
10. Immediately subsequent to the January Hearing, the undersigned communicated to the

Town Solicitor that this Board's prejudicial bias would necessitate the within Motion.

11. The Town Solicitor did not respond to undersigned's foregoing verbal advisement.

12. On February 1, 2024, the Municipal Court granted the Town's motions to dismiss, due to insufficient evidence, the following Summonses (with corresponding alleged Offenses/Ordinances) against Mr. Laliberty:

    - Summons #5503 (dated August 25, 2023)
        - "serving alcohol after closing"/E. Greenwich Ord. No. 15-4(5)
    - Summons #5604 (dated July 14, 2023)
        - "after hours music"/id. No. 15-4(22)

13. On February 15, 2024, the Municipal Court entered not-guilty verdicts against Mr. Laliberty, with respect to the following Summonses (with corresponding alleged Offenses/Ordinances):

    - Summons #5607 (dated July 26, 2023)
        - "consumption/possession minors"/id. No. 15-3
        - "conduct of patrons"/id. No. 15-4(11)
    - Summons #5608 (dated July 26, 2023)
        - "serving of minors"/id. No. 15-4(28)

14. Mr. Laliberty appealed the only guilty verdict (regarding loitering of minors) to the State of Rhode Island Superior Court, Kent County.

15. The Superior Court scheduled a conference in said action on April 18, 2024.

16. On February 27, 2024, the undersigned sent an electronic-mail message to the Town Solicitor that the within Motion is necessitated by the prejudice, bias, partiality and unfairness of this Board.

17. The Town Solicitor did not respond to the undersigned's February 27, 2024 electronic-mail message.
18. In or about March 2024, the Town Solicitor furnished the undersigned with a Notice of an April 9, 2014 Hearing to show cause why this Board should not impose penalty(ies) with respect to (a much-reduced) two alleged violations (to wit, minor(s) loitering and alcoholic-beverage service).

III. ARGUMENT

The Members of this Board – sitting in a quasi-judicial capacity – are subject to the State of Rhode Island Code of Judicial Conduct (the "Code"). Code Rule 2.11 provides, inter alia, that:

> "(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:
>
> "(1) The judge has a personal bias or prejudice concerning a party."

The Comments regarding Rule 2.11 follow:

> "[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. In this jurisdiction, the term 'recusal' is often used interchangeably with the term 'disqualification.'
>
> "[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed."

Code Rule 2.2 provides, inter alia, that "[a] judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." Comment 1 thereto further provides that, "[t]o ensure impartiality and fairness to all parties, a judge must be objective and open-minded."

The above comments from Board Member Corenthal evince maximal bias, prejudice, partiality and unfairness with respect to the Respondent. Her January comments echo her similar bias/prejudice/partiality/unfairness from the November Hearing: "There's been six violations. You're not a good partner. You're really not. I don't think you should have a business frankly. I don't think that you are good for the town (November Hearing, at 34:38)…. I would say no to

almost anything you asked of me." (Id., 1:05:20) (emphasis added). It is axiomatic that, pursuant to Rules 2.11 and 2.2 (in tandem with its Comments), disqualification of Board Member Corenthal is required. Her comments indicate her uncontroverted bias, prejudice, unfairness and partiality with respect to the Respondent.

Board Member Englehart also represented that, not only has she similarly prejudged the alleged violation(s) against the Respondent, but that she has already prejudged some phantom hypothetical future violations as well:

> "I'm going to gather, with all due respect, that there's going to be another violation … maybe one or two" (January Hearing, at 1:35).

Such pronouncements are hardly the requisite perspective of an unbiased, non-prejudiced adjudicator. No observer whatsoever can expect that the current constitution of this Board would afford the Respondent a fair hearing, in light of such inappropriate commentary. To add insult to injury, Board Member Englehart evidently could not resist her attempt at a joke, at the expense of the then-present sole Member of the Respondent:

> "I get the police log as you know [laughing]. It's good reading!" (id., at 2:27).

This clearly inappropriate comment for a purportedly neutral "judge" produced an audible gasp, upon information and belief, from this Board's counsel – who understood this Board's proper role.

The Respondent has no opportunity for a fair, unbiased, impartially, unprejudiced Hearing inasmuch as these two Board Members are permitted to participate in such a Hearing. A further,

and not insignificant, negative consequence of this prejudice is that the Respondent is then compelled to even make this within Motion – which, save these Board Members' prejudice, would be unnecessary. Quite regrettably, however, their prejudicial conduct has now irreparably polluted these proceedings. Perhaps even worse – if possible – is the Town Solicitor simply ignoring the undersigned's communications regarding the same. Had the Town's Solicitor simply acknowledged the obvious, and these two Board Members recused themselves, the unpleasantness associated with the within Motion could have been altogether avoided.

IV. CONCLUSION

Two Board Members violated the Code of Judicial Conduct – on multiple counts, in four separate categorial obligations: bias, prejudice, partiality and unfairness. The unfairness which they have directed to the Respondent in this matter is no less than the combined historical unfairness shown the likes of Rubin "Hurricane" Carter, Clarence Earl Gideon or Evan Gershkovich, in New Jersey, Florida and Russia, respectively. As such, their disqualification is mandatory. Even if this Board somehow again tries to sidestep its core function, and unfairly, prejudicially and partially deny the within Motion, any subsequent action undertaken by this Board with respect to this Hearing would be irretrievably tainted by its blatant bias/prejudice/partiality/unfairness. Immediate disqualification of these two Board Members is required. Inasmuch as it proceeds on this matter with Board Members Corenthal and Englehart, this Board has effectively stripped itself of any jurisdiction to take any further action whatsoever with respect to this matter.

With the Due-Process genie so corruptibly and irretrievably out of the bottle – and any further proceedings before the currently-constituted Board rendered a poisoned nullity – the future legitimacy of this Board itself demands immediate disqualification of these two Members. Alternatively, in the event that both Members are not immediately disqualified, a continuance is required, so that any such Order regarding this Motion can be immediately appealed to the Department of Business Regulation, and/or the Respondent can apply for a stay of the Hearing to a court/tribunal of competent jurisdiction, for a proper ruling.

Dated: April 3, 2023

Respondent

Low Key, LLC,
d/b/a LowKey Café

By Its Attorneys:

/s/ Sean T. O'Leary_____
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CERTIFICATION OF SERVICE

I hereby certify that, on the 3rd day of April 2024, I electronically distributed the within document on the following: Town of East Greenwich Board of License Commissioners Chairperson; Chairperson Special Counsel and Peter Skwirz, Esq.

/s/ Sean T. O'Leary____
Sean T. O'Leary, Esq.