

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX, BLDG 68-69
1511 PONTIAC AVENUE
CRANSTON, RI 02920

D.L. Enterprises, Inc.	:	
Appellant,	:	
	:	DBR No. 14LQ028
v.	:	
	:	
East Providence City Council,	:	
Appellee.	:	

**DECISION AND ORDER DENYING MOTION FOR STAY
AND DISMISSING THE APPEAL**

On March 4, 2014, the East Providence City Council (“Council”) revoked the liquor license of D.L. Enterprises (“Appellant”). On April 28, 2014, the Department of Business Regulation (“Department”) issued a decision overturning the revocation, imposing a suspension for “time served,” and remanding the matter to the Council to impose public safety conditions on the license. In response, the Council revoked the Appellant’s entertainment license. The Appellant appealed to the Department and made a motion for a stay. Oral arguments on the motion for a stay were heard by the undersigned on June 4, 2014.

The Department does not have subject matter jurisdiction over entertainment licenses that are issued under a separate licensing scheme that is distinct from liquor licensing. *Ada’s Creations, Inc. v. City of Providence Board of Licenses*, DBR No. 13LQ056 (June 6, 2013) (“the Department lacks jurisdiction to stay the Board’s decision as it pertains to the Appellant’s separate entertainment license”).¹ Such entertainment licenses are issued not by any authority

¹ This holding was upheld by a bench decision issued by the Honorable Judge Procaccini (C.A. No. 13-2755).

conferred by Title III, but by R.I. Gen. Laws § 5-22-1 *et seq.* (“city councils may license, regulate, and in those cases specifically set forth in 5-22-5, may prohibit and suppress ... shows and performances in their respective towns, conforming to law.”)² “A licensing authority’s decision to revoke, deny, or otherwise take action on a separate entertainment license under § 5-22-5 is not appealable to the Department.” *Ada’s, id.* See R.I. Gen. Laws § 42-14-1 (listing the chapters with which the Department is charged with enforcing to the exclusion of chapter 5-22). Rather, the proper venue for appealing revocation of an entertainment license is by *writ of certiorari* to the Rhode Island Supreme Court.³

R.I. Gen. Laws § 3-7-7.3 provides:

Notwithstanding any provision of this chapter or in the Rhode Island general laws to the contrary, in the case of any city or town which issues any retailer's Class B license this city or town may restrict or prohibit entertainment at these licensed facilities, in accordance with objective standards adopted by the municipality and approved by the department of business regulation, provided that any standard shall be applied uniformly to all of these licensed facilities.

The Department has explained that R.I. Gen. Laws § 3-7-7.3 “is without application to the issuance of a *separate entertainment license* under R.I. General Laws § 5-22-1 *et seq.*,” and “only confers jurisdiction when the restrictions on entertainment imposed on Class B licensees are structured as *liquor license conditions*.” *Ada’s, id.* (emphasis in original). For example, in *2012 Sports Bar, Inc. v. City of Cranston*, the Department assumed jurisdiction where “[a]lthough utilizing the label ‘entertainment license,’ the Ordinance applies *exclusively* to liquor licensees.” DBR No. 12LQ084; 13LQ060 at 2 (December 9, 2013)(emphasis in original). The

² In *El Nido, Inc. v. Goldstein*, the Rhode Island Supreme Court recognized that “a class-B retailer's license and a victualing-house license confer two distinct privileges on a single licensee.” 626 A.2d 239 (R.I. 1993). Like a victualing license, an entertainment license issued under separate entertainment licensing scheme “confer[s] two distinct privileges on a single licensee.” *Id.*

³ See, e.g., *Gimmicks, Inc. v. Dettore*, 612 A.2d 655, 656(R.I. 1992) (“This matter comes before the Supreme Court on the plaintiff's petition for certiorari to review the decision of the Providence Board of Licenses that denied the plaintiff's application for an out-door-entertainment license.”) See also *Cadillac Lounge, LLC v. City of Providence*, 763 A.2d 993 (R.I., 2001); *Cadillac Lounge, LLC v. City of Providence*, 913 A.2d 1039 (R.I. 2007); *Phelps v. Bay St. Realty Corp.*, 425 A.2d 1236, 1239 (R.I. 1981).

Department explained: “[b]ecause the City is using the Ordinance to impose entertainment restrictions specifically upon liquor licensees, including Class B license holders, R.I. Gen. Laws § 3-7-7.3 applies to decisions made under the Ordinance.” Id.

In the instant case, the City of East Providence Code of Ordinances, Sec. 8-69 provides:

- (a) Whenever the chief of police shall grant a one-day license permitting dancing or any other entertainment, the fee for such license is hereby fixed as follows:
 - (1) Per day where no alcoholic beverages are served\$ 2.00
 - (2) Per day where alcoholic beverages are served5.00
- (b) Whenever the city council shall grant an annual license permitting dancing or any other type of entertainment, the fee for such license shall be \$150.00.
- (c) Licenses granted pursuant to this section for dancing and other forms of entertainment are granted subject to the provisions of the G.L. 1956, § 5-22-9 and also other applicable provisions of G.L. 1956, § 5-22-1 et seq.

This ordinance creates a separate entertainment license distinct from the liquor license. Establishments other than liquor licensees, *e.g.* a BYOB establishment, a coffee shop, etc., are required to have this separate entertainment license to provide entertainment. The ordinance specifically references R.I. Gen. Laws § 5-22-1 *et seq.* which is the grant of authority to issue entertainment licenses.

The Appellant quotes *Satin Doll, LLC d/b/a Satin Doll v. The City of Providence Board of Licenses*, DBR No. 13LQ157 (03/18/14), for the proposition that “as the superlicensing authority over all liquor control matters, the Department also has the power to make final determinations as to whether provisions of Title III are violated if a municipality uses Title III provisions to penalize another license held by an appellant.” However, “the language that [Appellant] rel[ies] upon is pure dicta, and it had no bearing on the disposition of the case.” *McAninch v. State of Rhode Island Dep't of Labor & Training*, 64 A.3d 84, 90 (R.I. 2013) (referencing Black's Law Dictionary 1177 (9th ed.2009), defining “*obiter dictum*” as “[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the

decision in the case and therefore not precedential”). Even if the statement was not dictum, it should not be interpreted to mean that the Department would assume jurisdiction over a non-liquor license if that license was revoked for violations of Title III. Rather, the statement indicates that the Department’s Title III determinations are final. In other words, the Department posited that its findings would have a *res judicata* effect if a licensing authority attempted to take action on another license for a liquor violation after the Department found that no liquor violation occurred. This statement does not amount to assumption of jurisdiction over an entertainment license that is separate and distinct from the liquor license. In fact, *Satin Doll* expressly provided that “[t]he Department does not have jurisdiction to review the suspension of any other licenses held by the Appellant, *i.e.* entertainment, victualing, etc.” *Id.*

The Appellant argues that there is jurisdiction because the decision of the Board was in response to the Department’s order of remand to establish safety conditions on the liquor license and because the Council’s decision includes the language for appealing liquor license decisions to the Department. However, it is well established that “subject-matter jurisdiction cannot be ‘waived nor conferred by consent of the parties.’” *Rogers v. Rogers*, 18 A.3d 491, 493 (R.I. 2011) (quoting *Paolino v. Paolino*, 420 A.2d 830, 833 (R.I. 1980)). Thus, the way that the Board handled the revocation of the entertainment license cannot confer subject matter jurisdiction on the Department.

It is important to remember that all administrative agencies powers are derived from statute and an agency cannot do what is not provided for in law. “An administrative agency is a product of the legislation that creates it, and it follows that ‘[a]gency action is only valid, therefore, when the agency acts within the parameters of the statutes that define [its] powers.’” *In re Advisory Opinion to the Governor*, 627 A.2d 1246, 1248 (RI 1993) (citation omitted). *See*

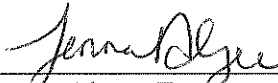
also *Iselin v. Ret. Bd. of Employees' Ret. Sys. of Rhode Island*, 943 A.2d 1045 (RI 2008); *F. Ronci Co. v. Narragansett Bay Water Quality Management District Commission*, 561 A.2d 874 (R.I. 1989). In this case, the Department is powerless to assume jurisdiction over the entertainment licensing matter; no statute confers such authority upon it.

RECOMMENDATION

It is recommended that the Director order as follows:

1. The Motion for a Stay is denied for lack of subject-matter jurisdiction.
2. The Appeal is dismissed for lack of subject-matter jurisdiction.

Date: 6/6/14



Jenna Algee, Esq.
Hearing Officer

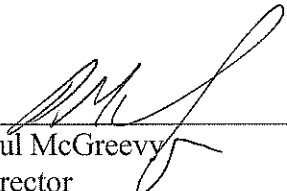
ORDER

I have read the Hearing Officer's recommendation and I hereby (check one)

- Adopt
- Reject
- Modify

the recommendation of the Hearing Officer in the above-entitled Decision and Order.

Date: 6 June 2014



Paul McGreevy
Director

Entered as an Administrative Order No.: -14-32 this 6th day of June, 2014.

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.

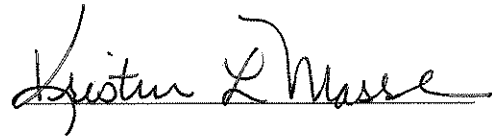
CERTIFICATION

I hereby certify on this 6th day of June 2014, that a copy of the within order was sent by e-mail and first class mail, postage prepaid to:

William Maaia, Esq.
Law Offices of William C. Maaia & Associates
349 Warren Ave
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and by email to Maria D'Alessandro, Deputy Director, Securities, Commercial Licensing and Racing & Athletics and Jenna Algee, Esq., Legal Counsel

A handwritten signature in cursive script, reading "Kristin L. Masse", written over a horizontal line.