

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

James and Laureen D'Ambra	:	
Appellants,	:	
	:	
v.	:	DBR No.: 14LQ058
	:	
Narragansett Town Council,	:	
Appellee.	:	

ORDER

I. Introduction

This matter arose pursuant to an appeal filed by James and Laureen D'Ambra ("Appellants") pursuant to R.I. Gen. Laws § 3-7-21 with the Department of Business Regulation ("Department") regarding a decision ("Decision") by the Narragansett Town Council ("Town") to renew the Class BV liquor license ("License") held by The Break, LLC ("Licensee" or "Break"). The Appellants moved to stay the renewal and a hearing on the stay request was held on December 4, 2014 before the undersigned pursuant to a delegation of authority by the Director of the Department. The Break moved to intervene which was granted. At the hearing, there was an issue of whether the Appellants had standing to bring an appeal of renewal. Also at hearing, it was represented that this License was initially granted in April, 2013. It was then apparently transferred in February, 2014 and was recently renewed; however, the Break has not opened. The undersigned raised the issue of Rule 14 of *Commercial Licensing Regulation 8 – Liquor Control Administration* ("CLR8") which provides as follows:

GRANTED LICENSE (NOT ISSUED)-RETAIL

A retail alcoholic beverage license may be granted but not issued pending full compliance with conditions and criteria necessary for the issuance of said license. All such "grants" of alcoholic beverage licenses shall be in writing. The license shall particularly describe the place or premises where the rights under the license are to be exercised. The applicant shall have no more than one (1) year after the original granting of the license to meet all conditions and criteria set forth in the granting order. If the applicant does not meet all the conditions and criteria within one (1) year, the license shall become null and void without further hearing by the local licensing authority; provided, however, said time period shall not be calculated when the license at issue is involved in litigation, from the date of commencement of the action to final disposition.

II. Discussion

a. Standing

It was not disputed that the Appellants are located within 200 feet of the Licensee; however, this matter is a renewal of a License. When an original license is issued, abutters within 200 feet of the new licensee have the right to appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21.¹ R.I. Gen. Laws § 3-5-17² provides what type of notice to 200 feet abutters

¹ R.I. Gen. Laws § 3-7-21 provides in part as follows:

Appeals from the local boards to director. – (a) Upon the application of any petitioner for a license, or of any person authorized to protest against the granting of a license, including those persons granted standing pursuant to § 3-5-19, or upon the application of any licensee whose license has been revoked or suspended by any local board or authority, the director has the right to review the decision of any local board, and after hearing, to confirm or reverse the decision of the local board in whole or in part, and to make any decision or order he or she considers proper, but the application shall be made within ten (10) days after the making of the decision or order sought to be reviewed. Notice of the decision or order shall be given by the local or licensing board to the applicant within twenty-four (24) hours after the making of its decision or order and the decision or order shall not be suspended except by the order of the director.

² R.I. Gen. Laws § 3-5-17 provides as follows:

Notice and hearing on licenses. – Before granting a license to any person under the provisions of this chapter and title, the board, body or official to whom application for the license is made, shall give notice by advertisement published once a week for at least two (2) weeks in some newspaper published in the city or town where the applicant proposes to carry on business, or, if there is no newspaper published in a city or town, then in some newspaper having a general circulation in the city or town. Applications for retailer's Class F, P and Class G licenses need not be advertised. The advertisement shall contain the name of the applicant and a description by street and number or other plain designation of the particular location for which the license is requested. Notice of the application shall also be given, by mail, to all owners of property within two hundred feet (200') of the place of business seeking the application. The notice shall be given by the board, body or official to whom the

is required to be given for an original application for license. Notice is also given to 200 feet abutters for a transfer or relocation of license pursuant to R.I. Gen. Laws § 3-5-19.³ R.I. Gen. Laws § 3-7-21 also provides that those granted standing pursuant to R.I. Gen. Laws § 3-5-19 have the right to appeal. R.I. Gen. Laws § 3-5-19 applies to the transfer or relocation of a license where the notification process is the same as an original application. R.I. Gen. Laws § 3-7-6 governs the renewal of liquor licenses including Class B licenses. Appeal rights are not granted to 200 feet abutters in renewal matters since a renewal does not involve a new license, or a new location, or a new owner. Thus, the Appellants do not have standing to appeal the renewal of the License.

b. Sua Sponte

The Department has broad and comprehensive control over the traffic in intoxicating liquors. Indeed, the Department’s power of review is so broad that it has been referred to as a

application is made, and the cost of the application shall be borne by the applicant. The notices shall state that remonstrants are entitled to be heard before the granting of the license, and shall name the time and place of the hearing. At the time and place a fair opportunity shall be granted the remonstrants to make their objections before acting upon the application; provided that no advertisement or notice need be given pursuant to this section when a license holder applies for a temporary seasonal expansion of an existing liquor license.

³ R.I. Gen. Laws § 3-5-19 states in part as follows:

Transfer or relocation of license. – (a) The board, body or official which has issued any license under this title may permit the license to be used at any other place within the limits of the town or city where the license was granted, or, in their discretion, permit the license to be transferred to another person, but in all cases of change of licensed place or of transfer of license, the issuing body shall, before permitting the change or transfer, give notice of the application for the change or transfer in the same manner as is provided in this chapter in the case of original application for the license, and a new bond shall be given upon the issuance of the license provided, that notice by mail need not be made in the case of a transfer of a license without relocation. In all cases of transfer of license, indebtedness of the licensee incurred in the operation of the licensed premises shall be paid to or released by an objecting creditor before the issuing body permits the transfer. In cases of dispute as to the amount of indebtedness, the issuing body, may, in its discretion, permit the transfer upon statement of the licensee, under oath, that the claim of indebtedness is disputed and that the statement of dispute is not interposed for the purpose of inducing transfer of the license. No creditor is allowed to object to the transfer of a license by a receiver, trustee in bankruptcy, assignee for the benefit of creditors, executor, administrator, guardian or by any public officer under judicial process. In case of the death of any licensee, the license becomes part of the personal estate of the deceased. The holders of any retail Class A license within the city or town issuing or transferring a Class A license have standing to be heard before the board, body, or official granting or transferring the license.

“state superlicensing board.” *Baginski v. Alcoholic Beverage Comm'n.*, 4 A.2d 265, 267 (R.I. 1939). Because of this broad authority to enforce Title 3, the Department may review matters on appeal pursuant to its authority under R.I. Gen. Laws § 3-2-2⁴ rather than R.I. Gen. Laws § 3-7-21.

The Department exercises its authority under R.I. Gen. Laws § 3-2-2 when the matter rises to a level that impacts its broad authority over statewide licensing. For example, the Superior Court in *City of Providence Bd. of Licenses v. State Department of Business Regulation*, 2006 WL 1073419 (R.I. Super.), upheld the Department’s authority to hear a matter on appeal pursuant to the Department’s *sua sponte* authority under R.I. Gen. Laws § 3-2-2. In that matter, the *Providence Journal* appealed to the Department and argued that the Providence Board of Licenses (“Providence Board”) had not followed Rule 27 of CLR8 when it had granted an expansion of a liquor license to a licensee without a public hearing as required by Rule 27.⁵ The Superior Court found as follows:

Rule 27 is promulgated through the above statutory provisions and enforceable statewide. Rule 27 would be revoked by implication if the Department cannot enforce it against a local board that does not appropriately apply it. *See El Marocco Club, Inc. v. Richardson*, 746 A.2d 1228, 1231 (R.I.2000) (concluding that where the implication of a municipality's authorization to attach conditions to the issuance of a liquor license was not read into § 3-5-21, “the power to revoke or suspend licenses becomes a nullity since there is no basis upon which [said power] can be exercised []”) (quoting *Thompson v.*

⁴ R.I. Gen. Laws § 3-2-2 provides as follows:

Supervision. – (a) The department has general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting, keeping for sale, and selling beverages.

(b) The department may lease a warehouse for the purpose of efficiently exercising its powers and duties of inspection and may upon reasonable charges store beverages for license holders in the warehouse. No lease shall be for a longer period than five (5) years and every lease shall contain the provision that if it becomes unlawful to manufacture, keep for sale, and to sell beverages in this state it shall become void.

(c) The department has the power at any time to issue, renew, revoke and cancel all manufacturers', wholesalers' and retailers' Class G licenses and permits as are provided for by this title.

(d) The department shall supervise and inspect all licensed places to enforce the provisions of this title and the conditions, rules and regulations which the department establishes and authorizes.

⁵ Subsequent to this case, the statute was amended to preclude the requirement for a hearing on a seasonal expansion.

East Greenwich, 512 A.2d 837, 841 (R.I.1986) (citing *Gott v. Norberg*, 417 A.2d 1352, 1356-57 (R.I.1980))). Therefore, by precluding the application of the rule, the Journal and others similarly situated are stripped of their right to a meaningful opportunity to challenge any license expansion when the Board, on its own, deems the rule inapplicable. This was clearly not the intent of the General Assembly when it created the Department.

The Court has long recognized the Department's statewide authority in the regulation of alcoholic beverages, deeming it a "state superlicensing board." *Baginski*, 62 R.I. at 182, 4 A.2d at 265. Vested with such authority, the Department, on its own motion, has the power and jurisdiction to revoke such licenses that have been acquired in disregard of its rules and regulations. See *Belconis v. Brewster*, 65 R.I. 279, 284, 14 A.2d 701, 703 (1940) (the liquor control administration may, of its own motion, revoke or suspend any license dealing with the distribution of alcoholic beverages).

In *City of Providence*, there was an issue of whether the *Providence Journal* had standing to bring the appeal to the Department. The Department found that whether or not the *Providence Journal's* appeal was timely, the Department as a "superlicensing" body had the general supervisory authority to take cases *sua sponte* to ensure compliance with Title 3. The Superior Court upheld this finding. Thus in that matter, the Department exercised its authority pursuant to R.I. Gen. Laws § 3-2-2 to hear the *Providence Journal's* appeal as the issue before the Department hinged on whether the Providence Board had complied with a specific statewide rule. See also *Volare, Inc. d/b/a Barry's v. City of Warwick Board of Public Safety*, LCA-WA-95-01 (7/17/95) (finding that the Department also had jurisdiction under R.I. Gen. Laws § 3-2-2 as the Department has jurisdiction to ensure compliance with Title 3).

The Department also has exercised its authority under R.I. Gen. Laws § 3-2-2 to review sanctions to ensure statewide consistency of sanctions. See *Bourbon Street, Inc. d/b/a Senor Frogs/Sully's Sports Bar v. Newport Board of Licenses Commissioners*, 1999 WL 1335011 (R.I. Super.). See also *Green Point Liquors v. McConaghy*, 2004 WL 2075572 (R.I. Super) (discussion of *sua sponte* authority on part of Department to bring actions and to review local actions).

c. This Appeal

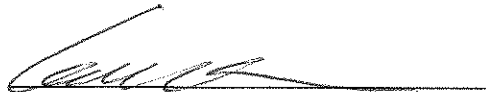
Like *City of Providence*, the issue in this matter turns on the issue of compliance by a local authority with a statewide rule. The Appellants do not have standing to object to the renewal of the License based on alleged violations of Town Ordinances by the Break. However, the appeal may proceed on the issue of Rule 14.

Apparently Rule 14 had not been considered by the Town. The undersigned indicated to the attorneys that she could remand this issue to the Town for a full consideration of Rule 14. The Break and the Appellants both requested that the Department issue a decision without a remand. The Town voiced no opinion. Unless one of the parties files an objection to the Department hearing this matter without a remand, the Department will consider this matter without remand. There was no appeal taken on the granting of the license in 2013 so apparently there was no litigation related to the granting of the License. However, the parties represented there was an issue of whether the Break was in litigation in terms of zoning issues and whether that would fall under the Rule 14 litigation exemption.

The Appellants requested a stay of the renewal on the basis of zoning violations. The motion for stay is denied as the Appellants have no standing to bring an appeal of a renewal.

The only issue for this appeal is whether pursuant to Rule 14, the License still exists. This shall be heard on **January 8, 2015 at 2:00 p.m.** at the Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI.⁶

Dated: 12/12/14


Catherine R. Warren
Hearing Officer

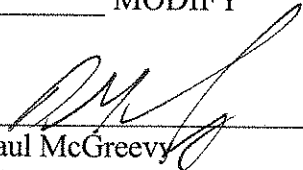
⁶ If this date is inconvenient for a party, the party should contact all parties and the undersigned so that a mutually agreeable date can be found.

INTERIM ORDER

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

ADOPT
 REJECT
 MODIFY

Dated: 12 Dec 2014



Paul McGreevy
Director

Entered this day as Administrative Order Number 14-70 on 12th of December, 2014.

NOTICE OF APPELLATE RIGHTS

THIS ORDER IS REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35-15(a) WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF A PETITION DOES NOT STAY ENFORCEMENT OF THIS ORDER.

CERTIFICATION

I hereby certify on this 12th day of December, 2014 that a copy of the within Order and Notice of Appellate Rights was sent by first class mail, postage prepaid to

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and by hand delivery to Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Bldg. 68-69, Cranston, RI 02920.

