

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

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**334 South Water LLC d/b/a Mile & A Quarter,  
Appellant,**

**v.**

**City of Providence, Board of Licenses,  
Appellee.**

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**DBR No.: 16LQ007**

**RECOMMENDATION AND ORDER GRANTING  
MOTION FOR STAY ON LIQUOR LICENSE<sup>1</sup>**

**I. INTRODUCTION**

On Sunday, April 24, 2016, the Providence Board of Licenses (“Board”) held an emergency suspension hearing on 334 South Water LLC d/b/a Mile & A Quarter’s (“Appellant”) licenses including its Class BVX liquor license (“License”). The Board ordered the Appellant’s License be suspended for 72 hours and scheduled a full hearing for Wednesday, April 27, 2016. The Appellant requested that the Department stay the emergency suspension of its License. By order dated April 27, 2016, the Department denied the request for stay. On April 28, 2016, the Superior Court issued an order limiting the Appellant’s License effective until May 4, 2016. The Board then continued those same conditions by order of the Board on May 4, 2016. The Board was scheduled to issue a decision on May 11, 2016. The Appellant requested a stay and by order dated May 5, 2016, the Department denied the request for stay. The Appellant now seeks a stay of the Board’s final decision issued on May 11, 2016. The stay hearing was held on May 12, 2016.

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<sup>1</sup> See below for how the Department does not have jurisdiction over the Appellant’s entertainment license.

## 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.*

A liquor appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21 is considered a *de novo* hearing. The Department's jurisdiction is *de novo* and the Department independently exercises the licensing function. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964); and *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Because the Department's has such broad and comprehensive control over traffic in intoxicating liquor, its power has been referred to as a "super-licensing board." *Baginski v. Alcoholic Beverage Comm.*, 4 A.2d 265, 267 (R.I. 1939). See also *Board of Police Com'rs v. Reynolds*, 133 A.2d 737 (R.I. 1957). The purpose of this authority is to ensure the uniform and consistent regulation of liquor statewide. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964).

## III. MOTION TO STAY

A stay will not be issued unless the party seeking the stay makes a "strong showing" that "(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest." *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976). Despite the ruling in *Harsch*, the Supreme Court in *Department of Corrections v. Rhode Island State Labor Relations Board*, 658 A.2d 509 (R.I. 1995) found that *Harsch* was not necessarily applicable in all agency actions and the Court could maintain the *status quo* in its discretion when reviewing an administrative decision pursuant to R.I. Gen. Laws § 42-35-15(c). While appeals before the Department do not fall under R.I. Gen. Laws § 42-35-15(c), it is instructive to note that the *Department of Corrections* found it a matter of discretion to hold matters in *status quo* pending review of an agency decision on its merits.

#### IV. STANDARDS FOR DISORDERLY CONDUCT

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 revoking or suspending a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. See *Cesaroni v. Smith*, 202 A.2d 292, 295-296 (R.I. 1964). 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.

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 (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, 842-3 (R.I. 1966). See also *Scialo v. Smith*, 99 R.I. 738 (R.I. 1965). As the Supreme Court has found, “the responsibility of a licensee for the conduct of his patrons within the licensed premises that makes it disorderly within the

meaning of the statute is established by evidence showing a toleration or acquiescence in such conduct by the licensee.” *Cesaroni*, at 296. See also *AJC Enterprises; Schillers*; and *Furtado v. Sarkas*, 373 A.2d 169 (R.I. 1977).

## **V. DISCUSSION**

The information received by the undersigned is based on representations of the parties. A transcript was not available. The Board imposed sanctions for two (2) different disorderly incidences. The parties agreed that on February 20, 2016, there was a fight outside the Appellant. They disagreed whether the responsibility for the fight could be inferred to the Appellant or not. The parties agreed that on April 24, 2016, there was an inside disturbance and an outside disturbance. They disagreed on the extent of the disorderly conduct.

The Board imposed the following sanctions:

For the February 20, 2016 incident: suspension of liquor license on May 20 and 21, 2016, penalty of \$2,500, police detail on Fridays and Saturdays, and monthly filing for entertainment.

For the April 24, 2016 incident: Three (3) day suspension of liquor license (already served); penalty of \$2,500, police detail on Fridays and Saturdays, 30 day suspension of entertainment license, and closure of premises at midnight for 30 days.

The Appellant seeks a stay of the two (2) day suspension, the 12 a.m. closing time for 30 days, and the 30 day entertainment license suspension.

### **A. Arguments**

The Appellant argued that there was no public safety issue with the February 20, 2016 fight as the Board did not take emergency action so that the two (2) day License suspension should be stayed. The Appellant argued that it was not responsible for that fight. The Appellant relied on a Department decision, *2012 Sports Bar, Inc. v. City of Cranston*, 12LQ084; 13LQ060 (7/22/16), to argue that the Department has jurisdiction over its entertainment license because the Board has not

promulgated regulations pursuant to R.I. Gen. Laws § 3-7-7.3.<sup>2</sup> The Appellant argued that the Board argues that it follows R.I. Gen. Laws § 5-22-1 *et seq.* for entertainment licenses but that statute is only for theatrical performances. The Appellant argued that the Department should maintain the *status quo* prior to April 24, 2016 and grant the stay pending the appeal.

The City argued that the recent *status quo* of the 11:00 p.m. closing has worked and should be maintained. The City argued that the Appellant does not have a likelihood of success on the merits in that the February 20, 2016 fight happened as the patrons exited. (The April 24, 2016 fight is admitted to). The City argued that the Appellant will not suffer irreparable harm for a two (2) day liquor license suspension. The City argued that it grants entertainment licenses pursuant to R.I. Gen. Laws § 5-22-12 and Title V does not fall under the Department's jurisdiction nor is it limited to theatrical performances but includes concerts, dances, disc jockeys, etc. The City argued that the *2012 Sports Bar* finding was because Cranston had not issued a separate entertainment license so that entertainment was a condition of the liquor license so that is distinguishable from this matter. The City argued that it has the power to revoke licenses so it can mandate a 30 days midnight closing.

The Board argued that the entertainment license is a separate license and does not follow a liquor license. The Board argued that it extended the *status quo* to a midnight closing for 30 days and would like to review a security plan. The Board argued that ambient music is allowed without an entertainment license and there is a concern that the music will get loud late at night.

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<sup>2</sup> R.I. Gen. Laws § 3-7-7.3 provides as follows:

Class B licenses – Restriction on entertainment. – 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.

## **B. Entertainment License**

Appeals to the Department can only relate to the liquor license held by the Appellant. See *El Nido v. Goldstein*, 626 A.2d 239 (R.I. 1993) (victualing license is a separate and distinct license from a liquor license). The Appellant has other avenues of appeal for its other licenses. The Rhode Island Supreme Court has held that when a town council acts in a quasi-judicial manner and does not provide for a right of appeal, the proper avenue for appeal is *writ of certiorari* to the Rhode Island Supreme Court. *Cullen v. Town Council of Town of Lincoln*, 893 A.2d 239 (R.I. 2000); *Eastern Scrap Services, Inc. v. Harty*, 341 A.2d 718 (R.I. 1975).

*2012 Sports Bar* related to a liquor licensee that did not have an entertainment license but rather entertainment was a condition of liquor licensing. The decision specifically held that the decision did not apply to separate entertainment licenses issued by the City (of Cranston) and by extension any licensing authority. R.I. Gen. Laws § 3-7-7.3 speaks of if a licensing authority generally restricts or prohibits entertainment at Class B facilities, then the local authority must have uniform standards. However, this matter relates to a separate entertainment license that is issued by the Board. The City's entertainment license is not solely directed at restricting or prohibiting entertainment at Class B facilities. Indeed, an entertainment license is provided for in the Providence Code of Ordinances in Section 14-195, 15-196, and 14-197.<sup>3</sup>

Under *Thompson v. East Greenwich*, 512 A.2d 837 (R.I. 1986), a town may grant a liquor license upon conditions that promote the reasonable control of alcoholic beverages. *Thompson* found that R.I. Gen. Laws § 3-5-21<sup>4</sup> allows municipalities to impose conditions on liquor licensees

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<sup>3</sup> A review of R.I. Gen. Laws § 5-22-1 *et seq.* indicates that it applies to more than theatrical performances. R.I. Gen. Laws § 5-22-5 empowers local authorities to require entertainment licenses. The Appellant pointed to the Board's website that speaks of entertainment licenses being issued under R.I. Gen. Laws § 3-7-7.3, but the issue is the actual legal authority rather than a website citation.

<sup>4</sup> R.I. Gen. Laws § 3-5-21 states in part as follows:

in accordance with R.I. Gen. Laws § 3-5-1<sup>5</sup> which restricts such conditions to be in the reasonable control of alcoholic beverages. Such a condition may be an individual condition<sup>6</sup> on the grant of a license or may be conditions (e.g. an ordinance) applicable to all liquor licensees. *El Marocco Club, Inc. v. Richardson*, 746 A.2d 1228 (R.I. 2000) upheld a locality's anti-nude dancing ordinance when it found that a 1997 statutory amendment, R.I. Gen. Laws § 3-7-7.3, specifically endowing localities with the power to restrict or prohibit entertainment in Class B licensees only clarified what was already authorized in R.I. Gen. Laws § 3-5-15 and R.I. Gen. Laws § 3-5-21. See also *Casa DiMario, Inc. v. Richardson*, 763 A.2d 607 (R.I. 2000). Thus, localities may impose conditions on liquor licensees other than provided for in the State statute as long as such conditions promote the control of alcoholic beverages. See *Amico's Inc. v. Mattos*, 789 A.2d 899 (R.I. 2002).

Thus, R.I. Gen. Laws § 3-3-7.3 relates only to rules for entertainment that only directly relate to Class B licenses. This is not the issue here.

The Department does not have jurisdiction over the Appellant's entertainment license and cannot issue or deny a stay regarding the entertainment license.

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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.

<sup>5</sup> R.I. Gen. Laws § 3-1-5 states as follows:

Liberal construction of title. – This title shall be construed liberally in aid of its declared purpose which declared purpose is the promotion of temperance and for the reasonable control of the traffic in alcoholic beverages.

<sup>6</sup> E.g. *Newport Checkers Pizza, Inc. d/b/a Scooby's Neighborhood Grille v. Town of Middletown*, LCA-MI-00-10 (12/7/00) (Department upheld Town's condition of an early closing of 11:00 p.m. as reasonable under *Thompson* to balance interests of neighbors and licensee).

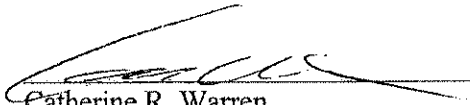
**C. Liquor License**

The Department has consistently followed progressive discipline barring an egregious act. Applying the stay criteria, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. In this matter, it cannot be ascertained which party will prevail without a full hearing. If a stay is not granted for the two (2) day suspension, the Appellant will not have a meaningful appeal. The Board has imposed a mandatory police detail which addresses the issue of public safety. The Appellant has been ordered to close for 30 days at midnight. While the Appellant argued that the Board did not have the power to limit the liquor license, conditions are allowed to be imposed on a liquor license. *Infra*. However, if a stay is not granted for the midnight closing, the Appellant will not have a meaningful appeal. Thus, in its discretion the Department will maintain the *status quo* prior to the events of April 24, 2016 for liquor licensing (bearing in mind that the Board has issued a mandatory weekend police detail).

**VI. RECOMMENDATION**

Based on the forgoing, the undersigned recommends that the Appellant's motion for a stay of the two (2) day suspension of its liquor license and the closing of the liquor license at midnight be granted.<sup>7</sup>

Dated: 5/13/16

  
Catherine R. Warren  
Hearing Officer

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<sup>7</sup> A Class BVX license runs with a food license so if the Appellant cannot use its food license after midnight, it cannot use its liquor license.




**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: 5/13/16

  
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Macky McCleary  
Director

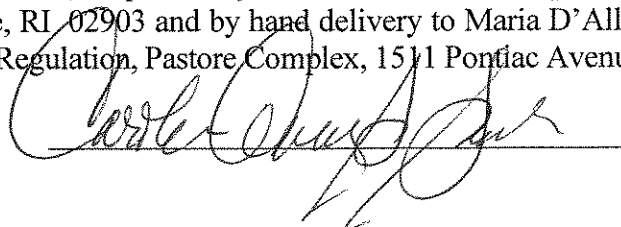
**A hearing on the merits is scheduled for June 7, 2016 at 9:30 a.m. at the Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI.<sup>8</sup>**

**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 13<sup>th</sup> day of May, 2016 that a copy of the within Decision was sent by first class mail, postage prepaid and by electronic mail to Gregory P. Piccirilli, Esquire, Sciacca & Piccirilli, 121 Phenix Avenue, Cranston, RI 02920, Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 02889, and Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903 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.

  
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<sup>8</sup> The Appellant is advised that it is responsible for a stenographer for the hearing pursuant to R.I. Gen. Laws § 3-7-21. If this date is inconvenient, the parties shall notify the undersigned and a new mutually convenient date will be schedule.