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

71 Richmond Investments, LLC Appellant,	:	
v.	:	**DBR No.: 14LQ048**
The City of Providence Board of Licenses, Appellee.	:	

DECISION

I. INTRODUCTION

On or about August 28, 2014, the Providence Board of Licenses ("Providence" or "Board" or "City") notified 71 Richmond Investments, LLC ("Appellant")[1] that the Board declared the Appellant's Class B liquor license ("License") abandoned. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision to the Director of the Department of Business Regulation ("Department"). Pursuant to R.I. Gen. Laws § 3-7-21(c),[2] the parties agreed to base the appeal on the record before the Board. Oral closings were held on October 7, 2014 before the undersigned sitting as a designee of the Director.[3]

[1] The Appellant is located at 71 Richmond Street, Providence, Rhode Island.

[2] R.I. Gen. Laws § 3-7-21 states in part as follows:

> Appeals from the local boards to director.
> ***
> (c) The director may accept into evidence a stenographic transcript of a witness's sworn testimony presented before the local board that was subject to cross examination. This testimony may be rebutted by competent testimony presented at the hearing held by the director.

[3] The undersigned received the transcript of the hearing on October 20, 2014.

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.*

III. ISSUES

Whether to uphold or overturn Providence's decision to abandon the Appellant's License.

IV. MATERIAL FACTS AND TESTIMONY

On August 28, 2014, the Board voted to find the Appellant's License abandoned. Based on the Board transcript hearing, the Appellant's owner received a telephone call three (3) days before hearing notifying him of the Board's intent to abandon the License. Apparently no written notice was served on the Appellant.[4] Based on the Board transcript, the Board had heard testimony at a previous hearing on a different matter that led the Board to conclude that this License had been abandoned. The testimony heard at the other hearing was not put on again at the August 28, 2014 hearing nor was the transcript from that hearing put into evidence before the Board. This evidence concerned an application for the transfer of the License from the Appellant to Garry Crum ("Crum") that was heard before the Board in July, 2014.[5]

The following timeline can be ascertained from the exhibits put in evidence at the appeal hearing:

Richmond 71 LLC d/b/a Music Hall ("Music Hall") applied for a transfer of Appellant's License to Music Hall which was granted by the Board on August 8, 2013. See Appellant's

[4] At the Department hearing, the Appellant represented that the Board never provided the Appellant with written notice of hearing before the Board. The Board's counsel indicated that he would confirm and obtain a copy of the written notice if one was sent. A copy of a written notice to Appellant for the August 28, 2014 was not submitted to the undersigned after the hearing. Therefore, the conclusion is that no written notice about the August 28, 2014 Board hearing was forwarded by the Board to Appellant.

[5] Before the Department, the parties rested on the record below but the Board requested that the record be kept open in order to provide the July, 2014 transcript. However, said transfer hearing transcript was not provided.

Exhibits One (1) and Two (2) (Board docket sheet for August 8, 2013 with transfer application on it; transcript of the August 8, 2013 Board hearing approving transfer).

Music Hall's request to withdraw its transfer of License was heard by the Board on December 23, 2013 and approved by the Board on that day. See Appellant's Exhibits Three (3) and Four (4) (Board docket sheet for December 23, 2013 meeting; transcript of approval by Board on that day).

The Appellant represented that both Music Hall and Appellant attempted in 2013 to satisfy the renewal conditions. The Appellant represented that it renewed its License and picked it up in February, 2014. The Board did not dispute this assertion.[6]

Garry Crum ("Crum") applied for a transfer of the License on April 24, 2014. See Appellant's Exhibit Five (5). Crum's transfer application was scheduled to be heard by the Board on July 2, 2014 but the hearing was continued to July 17, 2014. See Appellant's Exhibits Six (6) (July 2, 2014 Board docket) and Seven (7) (July 17, 2014 Board docket). It was represented that the transfer application was denied and a letter to that effect was issued on August 5, 2014.

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, 1049 (R.I. 1994). The Rhode Island 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. Dept.*

[6] The City indicated that it would confirm and notify the undersigned if it disagreed. After the hearing, the City did not submit anything further on the renewal issue.

of Environmental Management, 553 A.2d 541 (R.I. 1989). 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, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

In determining the policies and purposes of the liquor licensing statute intended by the legislature, it is necessary to examine R.I. Gen. Laws § 3-1-1 *et seq.* in its entirety. Rhode Island implemented this statutory scheme to regulate the sale of liquor after the repeal of Prohibition. The Rhode Island Supreme Court has stated that the legislature expressly provided for state control and has adopted a system for administering such control in a manner which it deems the "most likely to be productive of the public good." *Bd. of License Comm'rs v. Daneker*, 78 R.I. 101, 107 (R.I. 1951). This statutory scheme creates different types of liquor licenses from the manufacturing of liquor to the retail sale of liquor. The statutes at issue in this matter relate to the retail sale of liquor. *Daneker* held that the legislature determined that the towns and cities must offer certain types of liquor licenses unless the local voters decide not to offer any liquor for sale within said town or city. *Daneker* found that the law "prescribes how liquor may be sold throughout the state and nowhere therein either expressly or by necessary implication does it authorize local boards to make exceptions thereto." *Daneker*, at 105.

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

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 Comm'ers*, LCA TI-97-16 (11/10/97) (burden of proof for R.I. Gen. Laws § 3-7-21).

C. Relevant Statutes

R.I. Gen. Laws § 3-5-21 provides 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.

R.I. Gen. Laws § 3-7-6 provides as follows:

> Renewal of Class A, Class B, Class C, Class D, Class E, and Class J licenses. – The holder of a Class A, Class B, Class C, Class D, Class E, or Class J license who applies before October 1 in any licensing period for a license of the same class for the next succeeding licensing period is prima facie entitled to renewal to the extent that

the license is issuable under § 3-5-16. This application may be rejected for cause, subject to appeal as provided in § 3-7-21. A person whose application has been rejected by the local licensing authorities shall, for the purpose of license quotas under § 3-5-16, be deemed to have been granted a license until the period for an appeal has expired or until his or her appeal has been dismissed. The license holder may be required to pay a twenty-five dollar ($25.00) fee upon application of renewal, at the option of local licensing authorities. This fee shall be used by the local licensing authority for advertising and administrative costs related to processing the renewal application.

R.I. Gen. Laws § 3-7-7 Class B license states in part as follows:

(a)(1) A retailer's Class B license is issued only to a licensed bona fide tavern keeper or victualer whose tavern or victualing house may be open for business and regularly patronized at least from nine o'clock (9:00) a.m. to seven o'clock (7:00) p.m. provided no beverage is sold or served after one o'clock (1:00) a.m., nor before six o'clock (6:00) a.m. Local licensing boards may fix an earlier closing time within their jurisdiction, at their discretion. The East Greenwich town council may, in its discretion, issue full and limited Class B licenses which may not be transferred, but which shall revert to the town of East Greenwich if not renewed by the holder. The Cumberland town council may, in its discretion, issue full and limited Class B licenses which may not be transferred to another person or entity, or to another location, but which shall revert to the town of Cumberland if not renewed by the holder.

***

(2) The license authorizes the holder to keep for sale and sell beverages including beer in cans, at retail at the place described and to deliver them for consumption on the premises or place where sold, but only at tables or a lunch bar where food is served. It also authorizes the charging of a cover, minimum, or door charge. The amount of the cover, or minimum, or door charge is posted at the entrance of the establishments in a prominent place.

R.I. Gen. Laws § 3-5-9 states as follows:

Premises covered. - Not more than one retail license, except in the case of a retailer's Class E license, shall be issued for the same premises. Every license shall particularly describe the place where the rights under the license are to be exercised and beverages shall not be manufactured or kept for sale or sold by any licensee except at the place described in his or her license.

R.I. Gen. Laws § 3-7-7 governs the granting of Class B liquor licenses. It states that a Class B liquor license "is issued only to a licensed bona fide tavern keeper or victualer whose tavern or victualing house may be open for business and regularly patronized at least from nine

o'clock (9:00) a.m. to seven o'clock (7:00) p.m. . . ." The statute clearly provides that a Class B liquor license will be issued to a restaurant that is open and *is only* to be issued to a *bona fide* restaurant with business hours during certain times as set forth in the statute. As discussed in *Daneker*, the statute is providing for the sale of liquor within a tavern or a restaurant. R.I. Gen. Laws § 3-7-7 sets forth conditions to obtain a Class B liquor license. One of these conditions is that a Class B liquor license *is only* issued to a *bona fide restaurant*. The statute clearly does not allow that a Class B liquor license to be issued to a premise that is not a tavern or a restaurant. Instead, the Class B liquor license is only to be issued to a restaurant that is open during the hours as specified by statute.

R.I. Gen. Laws § 3-5-9 applies to retail licenses. It states that every license shall "particularly describe the place where the rights under the license are to be exercised and beverages shall not be . . . sold by any licensee except at the place described in his or her license." This section requires that the license must describe the location where the license is to be used and only that location can be used. If a Class B liquor license was not required to be issued to a premise then it would not matter whether the location was particularly described or not. R.I. Gen. Laws § 3-5-9 clearly envisions that all retail licenses must be used at a specific location. Indeed, it requires such location to be *particularly* described. R.I. Gen. Laws § 3-7-7 requires that a Class B liquor license *is only* to be granted to a *bona fide* restaurant. A *bona fide* restaurant would be able to particularly describe its location as it would be open and operating during the hours specified by statute.

D. Arguments

The Board argued that the License must be in continuous operation and when the Board discovered at another hearing that the License had not been used for 12 to 13 months, the Board

took notice and abandoned the License. The Board argued that the Appellant did not prove that it was using its License.

The Appellant argued that its case was not like *Baker v. Department of Business Regulation*, 2007 WL 1156116 (R.I.Super.) where the licensee had sat on an unused license for 11 years but rather the Appellant had within 60 days of renewing the License filed the transfer application to Crum. The Appellant argued it is actively trying to transfer the License and is not sitting on the License. The Appellant argued that the Board has the burden to prove that it was not operating and it provided no evidence that it was not operating. The Appellant argued that the Board Chair knew which way she would rule before a decision was made by the Board.[7]

---

[7] At the August 28, 2014 Board hearing, the Appellant's counsel requested a continuance of the hearing because of the short notice of hearing but the Board apparently was concerned that if a continuance was granted that would imply that the License existed; instead, counsel was told he could move for reconsideration after the License was abandoned. Thus, during the hearing but before a vote was taken by the Board, the Appellant's counsel was advised by the Board Chair as follows:

> What is the harm – all of the facts are in and I'm aware there is abandonment and our counsel is telling us to move for abandonment and next week you can move for a reconsideration.
> ***
> The [City] counselor sent me the cases and I did read them. And I think that the fair reading of this license is it's abandoned. . . . I have a counsel, but in my humble opinion the license is abandoned.
> (pp. 11; 13 of Board transcript).

It is true that since the Department's jurisdiction is *de novo*, if there is any error of law or fact by a licensing authority that error becomes irrelevant. However, it is worth bearing in mind that in *Barbara Realty Company v. Zoning Board of Review*, 128 A.2d 342 (R.I. 1957), a zoning board member's expressed opinions prior to a hearing demonstrated that he had pre-judged the issue that subsequently came before said board. The court found that a zoning board member should not say or do anything that would furnish a basis for raising an inference that he or she was biased in favor of one side or another. In order to maintain public confidence and in "keeping with the high canons of justice and fair play," the court quashed the zoning board's decision and remanded the matter for a *de novo* hearing with an alternate member to sit in the hearing. *Id.* at 344. In *Fernandes v. Bruce et al.*, 2014 WL 2558354 (R.I. Super.), a member of a decision-making board (a zoning board) indicated prior to hearing how he would vote on the application to be heard but did not recuse himself at hearing. The Superior Court relied on *Barbara Realty Company* and *Champlin's Realty Associates v. Tikoian*, 989 A.2d 427 (R.I. 2010) to find that the member had already precluded consideration of further evidence on this matter and that undermined the appearance of impartiality and was offensive to the due process clause' guarantee of an impartial and disinterested tribunal. The member also had business dealings and was a political supporter of one of the witnesses that appeared before the board. The court found that the member's failure to recuse himself rendered the board proceedings unconstitutional. These cases revolve on what was said prior to a hearing but it is worth noting the considerations contained therein.

E. Whether the License is Abandoned

Baker involved a situation where a class BV license was continually renewed but never used for eleven (11) years. Thus, that license was not being used by a *bona fide* restaurant and was not being used at a fixed premise. As a result Providence revoked that license and the Department upheld the revocation as did the Superior Court. That license was revoked for cause with the cause being non-use.

In this matter, the Board decided that based on another hearing before the Board, the License had been abandoned. It may be that the Board has reasons to deny the License for non-use. It could be that the Board is confusing the conditions of holding a Class BV license with the abandonment statutory provisions for Class A liquor license contained in R.I. Gen. Laws § 3-5-16.1. R.I. Gen. Laws § 3-5-16.1 states as follows:

> Revocation of abandoned Class A licenses. – Whenever it comes to the attention of any local licensing authority as defined in § 3-5-15 that the holder of a Class A license has abandoned the premises from which the licensee has been conducting his or her business or has ceased to operate under the license for a period of ninety (90) days or more then after hearing with due notice to the licensee the local licensing authority shall cancel the license; provided, that the authority may grant a reasonable period of time, not to exceed one year, to the licensee within which to reestablish the business where the abandonment or cessation of operating was due to illness, death, condemnation of business premises, fire or other casualty.

The Departmental and Superior Court *Baker* decision clearly explain that a Class BV license can be revoked for non-use even if there is no statutory provision for abandonment or non-use like there there is for Class A license. Baker's Class BV license was revoked for failing to comply with statutory conditions of licensing. The end result of a Class A abandonment or Class BV revocation is that there is no longer a license; however, for Class A the license is

cancelled as opposed to being revoked.[8] See *Green Point Liquors, Inc. v. McConaghy*, 2004 WL 2075572 (upholding Department decision finding a Class A license to be null and void and ordering the license be canceled).[9]

In terms of revoking a Class B license for non-use, the Superior Court in *Baker* found as follows:

> Section 3-7-7 states that a "retailer's Class B license is issued only to a licensed bona fide tavern keeper or victualer whose tavern or victualing house may be open for business and regularly patronized at least from nine o'clock (9:00) a.m. to seven o'clock (7:00) p.m....." The DBR found that under this statute, only bona fide restaurants that have the proper business hours should be allowed to maintain a Class B license. As the License in question was not attached to any such restaurant, the DBR held that it violates this section and is therefore invalid.
>
> Additionally, the DBR found that the License violates Section 3-5-9, which requires that "[e]very license shall particularly describe the place where the rights under the license are to be exercised." Because the License was not being used at the address to which it was issued, the DBR held that Section 3-5-9 had been violated as well. In the Decision, the DBR stated that finding "the License [to be] valid where it was unused for over eleven (11) years [] would make a mockery of the statutory requirements set forth by the Legislature to obtain and maintain a Class B liquor license." *See* Decision at 10.
>
> ***
>
> In Section 3-1-5, the Legislature expressly states that the declared purpose of title 3 is "the promotion of temperance and for the reasonable control of the traffic in

---

[8] The Superior Court addressed the Class A abandonment statute in its *Baker* decision:

> Before ending this inquiry, the Court will address Baker's argument related to Section 3-5-16.1. Under this section, a Class A liquor license can be cancelled if the license-holder "has abandoned the premises from which the licensee has been conducting his or her business or has ceased to operate under the license for a period of ninety (90) days or more ...." Baker argues that the Legislature's specific mention of Class A liquor licenses in this section indicates that only these types of licenses, and not the Class B licenses, can be revoked for non-use. ***
>
> For the sake of discussion, however, the Court notes that it finds Baker's arguments unconvincing. Although this Section provides for an additional avenue for revocation of a Class A liquor license, it does not nullify the requirements of Sections 3-7-7 and 3-5-9 for Class B liquor licenses. Section 3-7-7 controls Class B liquor licenses *only*, making it clear that the Legislature intended that this provision be applied to these licenses, notwithstanding the requirements for Class A liquor licenses. It would not have enacted Section 3-7-7 if it did not intend to ensure that only bona fide retailers with specified operating hours be allowed Class B licenses. Furthermore, Section 3-5-16.1 does not negate the provision in Section 3-5-21 that a license may be revoked for breach of *any* provisions of this section, nor does it undo the provision in Section 3-7-6 that a renewal application can be denied for cause.

[9] A Class A license that is abandoned (and subject to the statutory cap) cannot have new life breathed into it for the purpose of transferring it as it no longer exists. Similarly, once a license B is revoked, it cannot be resurrected for transfer but rather a new application must be filed for a Class B license.

alcoholic beverages." *See also Thompson v. East Greenwich,* 512 A.2d 837, 842 (R.I. 1986); *Independent Beer Distribs. Ass'n v. Liquor Control Hearing Bd.,* 94 R.I. 354, 361 180 A.2d 805, 808-09 (1962). Additionally, this Section explicitly directs that the "title [] be construed liberally" to further this purpose. Section 3-7-6 provides that an application for renewal of a license can be rejected for cause, and Section 3-5-21(a) states that, "[e]very license is subject to revocation or suspension ... by the board, body or official issuing the license ... for breach of any provisions of this section." Taken together, these sections unambiguously indicate a legislative intent to control the sale of alcoholic beverages through a statutory licensing scheme, and thus the Court must pay particular attention to the requirements contained in these sections.

The Court will not construe a statute to reach an absurd result. *State v. Menard,* 888 A.2d 57, 60 (R.I. 2005) (citations omitted). The requirement that a Class B liquor license be issued only to a "licensed bona fide tavern keeper or victiculer" is clearly delineated in Section 3-7-7, and requiring a license-holder to meet this requirement only at the exact moment of licensure would render it meaningless. Baker's interpretation of the statute would preclude a licensing authority from revoking the license of a license-holder who no longer met the requirements for licensure mere days after issuance. Constraining the licensing authorities in this way does not comport with the goal of reasonably controlling the traffic in alcoholic beverages.

Similarly, applying the provisions of Section 3-5-9 only at the moment of licensure would undercut the purpose of Title 3. The language of Section 3-5-9 indicates a legislative intent to ensure that Class B licenses are valid only when issued to a bona fide retailer. This Section requires that all retail liquor licenses be used at a specific location, and that the "place where the rights under the license are to be exercised" be particularly described in the license itself. The inclusion of such a provision further indicates the Legislature's intent to ensure more regulatory control over liquor licenses by correlating each license with a specific property. If this requirement is to be met only at the moment of issuance, then, again, the requirement itself becomes meaningless. Therefore, the Court finds that the DBR's determination that the requirements in Sections 3-7-7 and 3-5-9 apply to Class B licenses even after issuance comports with the legislative intent of Title 3, and is not an abuse of discretion or an error of law.

***

Thus, having upheld the DBR's determination that these Sections apply to Class B liquor licenses after issuance, the Court must now examine the DBR's finding that Baker has violated the provisions of Sections 3-7-7 and 3-5-9. A review of the record reveals that this finding is supported by the reliable, probative, and substantial evidence before the Court. Clearly, the License is not issued to a bona fide tavern keeper or victicular, as Baker's own testimony at the hearing revealed that she had never transferred the License to the restaurant currently occupying 223 Thayer Street. Similarly, the License violates the provisions of Section 3-5-9 because, although the License does contain a particularly described location, the rights had not been exercised there for years. In fact, Baker could not possibly comply with the requirements of Section 3-5-9 because the rights under the License were not being exercised *anywhere.*

> Lastly, the Court must review the DBR's final determination that violations of Sections 3-7-7 and 3-5-9 constitutes "cause" for revocation under Section 3-5-6. Baker argues that non-use cannot constitute "cause" under this statute. The Rhode Island Supreme Court has noted that in order for a renewal application to be rejected "for cause," the cause must be "legally significant, that is to say, it must be bottomed upon substantial grounds and be established by legally competent evidence." *Chernov Enterprises, Inc. v. Sarkas,* 284 A.2d 61, 63, 109 R.I. 283, 287 (1971). By conferring the right to revoke a license for a "breach of any provision of this section," Section 3-5-21 indicates that a breach of an applicable statute would provide legally sufficient cause to revoke a license. As a result, the Court cannot find that the DBR erred as a matter of law when it upheld the revocation of the License for cause under Section 3-7-6 because of Baker's violation of two statutory provisions.

Thus, in order to revoke this License the Board needed to properly find that the Appellant's License was not complying with statutory conditions of licensing (e.g. *bona fide* restaurant, specified location, opening times, etc.) and denied the renewal or revoked for cause pursuant to R.I. Gen. Laws § 3-7-6 (renewal) or R.I. Gen. Laws § 3-5-21 (revocation).

The Board is right that the Appellant cannot continually try to transfer a Class BV license that is not being used. It would be against the public policy of reasonably controlling the traffic in alcoholic beverages (as codified in the licensing statute) to allow licenses that are not being used and are failing to comply with the conditions of licensing to continue to exist. Indeed Rule 14 of *Commercial Licensing Regulation 8 – Liquor Control Administration*[10] addresses the issue of when a license is originally granted but not used right away. Said rule allows for a new license holder to have up to one (1) year to meet the conditions of licensing before using the

[10] Rule 14 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 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 the commencement of the action to final disposition.

license. Thus, for example, a new license holder may be granted a license prior to receiving occupancy approval and once that condition is met (within the year), the license will be issued.

In this matter, it is unclear whether the Appellant's License was a new license or a renewal of license. The License had been transferred and then the transfer was withdrawn. The time for filing a renewal application is prior to October 1[11] so that the Appellant would have had to file a renewal of its license for 2013 to 2014 by October 1, 2013. All licenses (except Class F and G) expire December 1[12] and if a renewal application is timely filed, the license is presumed to be renewed unless action to deny renewal is taken. See R.I. Gen. Laws § 3-7-6. During the time to file a renewal and expiration of license, Music Hall presumably held the License. However, the Appellant indicated at the Department hearing that it and Music Hall went through the renewal process but there was no such documentary evidence introduced at hearing. Music Hall's request for to withdraw was heard on December 23, 2013 and the License was apparently issued to the Appellant in February, 2014. It could be that the License issued in February, 2014 is a new license if the Appellant never filed a renewal application (though if it is new, it would have had to comply for new license application requirements). Or it could be that Music Hall's

[11] R.I. Gen. Laws § 3-7-6 states as follows:

> Renewal of Class A, Class B, Class C, Class D, Class E, and Class J licenses. – The holder of a Class A, Class B, Class C, Class D, Class E, or Class J license who applies before October 1 in any licensing period for a license of the same class for the next succeeding licensing period is prima facie entitled to renewal to the extent that the license is issuable under § 3-5-16. This application may be rejected for cause, subject to appeal as provided in § 3-7-21. A person whose application has been rejected by the local licensing authorities shall, for the purpose of license quotas under § 3-5-16, be deemed to have been granted a license until the period for an appeal has expired or until his or her appeal has been dismissed. The license holder may be required to pay a twenty-five dollar ($25.00) fee upon application of renewal, at the option of local licensing authorities. This fee shall be used by the local licensing authority for advertising and administrative costs related to processing the renewal application.

[12] R.I. Gen. Laws § 3-5-8 states as follows:

> Expiration date of licenses. – Every license except retailer's Class F licenses and retailer's Class G licenses shall expire on December 1 after its issuance.

withdrawal of the transfer request acted as a transfer application of the License from Music Hall back to Appellant. Or it could be that License was renewed as the parties believe.

If the License granted in February was a new License, then Rule 14 of CLR8 would apply and the License would not need to be used until February, 2015. If the Appellant renewed its License, then the Board could seek, if it chose, to revoke or deny renewal of License by non-use.

The undersigned inquired whether the City had an ordinance related to the non-use of a license. The City does not.[13] Unlike the Class A abandonment statute which is 90 days or a year depending on circumstances, non-use is not defined in statute or by ordinance but rather the Board would need to make a decision whether a license is being used based on whether the evidence introduced at a hearing showed that a licenseholder is no longer meeting the conditions of a Class B license as detailed by statute and *Baker*. See also *Inveen v. Bureau of Licenses*, City of Providence, DBR No. 03-L-0186 (10/22/04) (Class BV license revoked for non-use where license had not been used for over three (3) years); *Scharnhorst, Inc. v. Bureau of Licenses, City of Providence*, DBR No. 03-L-0180 (3/26/04) (Class BV license revoked for non-use where license had not been used for over one-and-a-half years and licensee failed to comply with the Board's 60 day period to relocate license); and *Mitrelis v. Providence Board of Licenses*, DBR No. 03-L-0133 (1/13/04) (Two (2) Class BV licenses were revoked for non-use where licenses had not been used for over seven (7) years).

There was no evidence presented to the Board on August 28, 2014 on which the Board could have based its decision. It based its decision on "evidence" that it heard at another hearing on a different matter in July, 2014 that was not presented to the Board on August 28, 2014. As

[13] The Town of Westerly has an ordinance that when an applicant has not served liquor for over ten (10) months, the licensing board may hold a hearing as to why the license should not be revoked. See *Mary's Italian Restaurant v. Town of Westerly Licensing Board*, DBR No. 07-L-0157 (11/16/07).

discussed above, there was also no determination by the Board as to the status of the License (new, transfer, ongoing). As in *Scharnhorst* and in response to the Board's concerns that this License not just continually try to be transferred, the Board could have considered given the Appellant a definitive date to transfer the License by or the License would be considered revoked for non-use (if warranted). Instead, the Board "abandoned" the License based on a telephone call to the Appellant and based on no evidence presented at the hearing. On appeal to the Department, the Board rested on the record below so no evidence (oral, documentary, or otherwise) was presented to the Department as to the non-use of the License.

VI. FINDINGS OF FACT

1. On or about August 28, 2014, the Board notified the Appellant that its License had been abandoned.

2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision to the Director of the Department.

3. Pursuant to R.I. Gen. Laws § 3-7-21(c), the parties agreed to base the appeal on the record before the Board.

4. Oral closings were held on October 7, 2014 with the parties resting on the record.

5. 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. Pursuant to R.I. Gen. Laws § 3-7-6 and R.I. Gen. Laws § 3-5-21, the Board has the power to revoke for cause or deny renewal for cause a Class B license for non-use; however, no evidence was presented to the Board or the Department to support a finding of non-use.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the Board's decision declaring the License to be abandoned be overturned.

Dated: October 31, 2014

Catherine R. Warren
Hearing Officer

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: 5 Nov 2014

Paul McGreevy
Director

Entered as an Administrative Order No.: 14-25 on the 6th of November 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 November, 2014 that a copy of the within Decision was sent by first class mail, postage prepaid to Robert A. D'Amico, II, Esquire, 536 Atwells Avenue, Providence, RI 02909 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.

Kristen L. Massé