

After the filing of written arguments, the undersigned requested that the City provided further documentation by April 18, 2016 regarding the filing of the application for renewal of the liquor license by the Transferor. Said documentation was filed by the City by April 18, 2016.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to 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. DISCUSSION

A. Relevant Documents

Certain documents were included in the Appellants' Motion for Remand which were undisputed by the parties; though, not marked as exhibits. Also the docket sheets for the Board meetings were submitted. Also the City submitted certain documents after the hearing; the Appellant objected to any consideration of the copy of the Transferor's license. These documents are as follows:

1. Copy of January 20, 2016 letter from the Board to the Intervenor's owner scheduling the application hearing before the Board indicating that the application is a transfer of the Class BV license and a new application for a Class BX license.
2. Copies of the classified advertisements in the *Providence Journal* for January 18 and 25, 2016 regarding the hearing to be held on this application. The advertisements indicate that it is a transfer of a BV license and an application for a new BX license.
3. Copy of the November 30, 2015 "application for transfer of license" completed by the Intervenor but not indicating the type of license for which application is being made.
4. Copy of the undated "application for License by a corporation" completed by Intervenor with checked off BV and X as licenses.
5. Copy of an undated "Retailer's Class BX liquor license" form completed by Intervenor.
6. Copies of separate applications by Intervenor for food dispenser license, tobacco license, and entertainment license all dated November 29, 2015.
7. Copy of undated form demonstrating workers compensation coverage by Intervenor.

8. Copy of February 22, 2016 Board letter to Intervenor indicating that the Board has granted the Intervenor a new BV license and a new BX license.
9. Copy of docket sheets with the Board administrator's notes on them for February 1 and 11, 2016 Board meetings. Also considered are the docket sheets from the secretary of state's website for these two (2) meetings.²
10. Copy of the Transferor's license valid for December 1, 2014 and December 1, 2015 indicating that it had a food dispenser, BV, BX, N, and holiday sales' licenses.
11. Copy of Transferor's license valid for December 1, 2015 to December 1, 2016 indicating it had a food dispenser, BV, BX, N, and holiday sales' licenses. Said license indicates it was transferred to Intervenor on March 28, 2016.³
12. Copy of transcript of February 1 and 11, 2016 hearings on the Intervenor's transfer application before the Board. Said transcripts note that all licenses exist already and are being transferred (except the N is not being transferred).⁴

The City further submitted the following documents by April 18, 2016 in response to a request from the undersigned:

1. A copy of an undated City form entitled "Retailer's Class BV – Full Liquor License" completed by Transferor.
2. A copy of part of the Transferor's licensing file indicating that the license was issued on November 30, 2015 and expires December 1, 2016 and was advertised on October 22 and 29, 2015 and that the appropriate fees were paid.
3. A copy of check dated November 30, 2015 from Transferor to the City for the licensing amount noted in the Transferor's licensing file and with same check number noted in said file.
4. A copy of a facsimile from Division of Taxation listing liquor licenses that were "cleared" (no tax liabilities) as of November 5, 2015 including Transferor.
5. Copy of check dated March 28, 2016 from Intervenor to City for the transfer fee with transfer licensing form.
6. Certificate of good standing from Division of Taxation indicating that the Transferor had no tax liabilities as of February 29, 2016.
7. List by City of all liquor licenses up for renewal in 2015 to be heard by Board on November 2, 2015 and to be advertised on October 22 and 29, 2015. Said list included the Transferor.
8. Print out of Board minutes from November 2, 2015 indicating approval of all liquor renewals except for three (3) licensees (that were not the Transferor).
9. Copies (again) of the Transferor's liquor license for December 1, 2015 through December 1, 2016 and the Intervenor's liquor license for same period.

² See www.sos.ri.gov. The undersigned informed the parties that she would print "clean" copies of the two (2) dockets from the secretary of state's office website. See *Arnold v. Lebel*, 941 A.2d 813 (R.I. 2007).

³ Provided by the City after the hearing on the motion to remand.

⁴ *Id.*

B. Relevant Statutes

R.I. Gen. Laws § 3-5-17 states 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 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.

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

Class B license.

(a)

(4) Any holder of a Class B license may, upon the approval of the local licensing board and for the additional payment of two hundred dollars (\$200) to five hundred dollars (\$500), open for business at twelve o'clock (12:00) p.m. and on Fridays and Saturdays and the night before legal state holidays may close at two o'clock (2:00) a.m. All requests for a two o'clock (2:00) a.m. license shall be advertised by the local licensing board in a newspaper having a circulation in the county where the establishment applying for the license is located.

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.

C. Arguments

The Appellants argued that as the Board treated the BX application as an application for a new license, the 200 foot abutters were required to be given statutory written notice by the Board and the Board's failure to do so should result in a remand to the Board. The Appellants argued that the failure to give notice cannot be cured as it is jurisdictional. The Appellants further argued that the copy of the Transferor's 2015-2016 license is inadmissible and lacks foundation and does not show that the license was actually renewed prior to the transfer application.

The Intervenor argued that it applied to transfer the licenses held by the Transferor which included a BV and BX. The Intervenor argued that any documentary references to a new license was due to clerical error by the Board. The Intervenor argued that the Board's hearing dockets sheets show that these were transfer of the BV and BX licenses and that was put on the record at the Board hearing. The Intervenor argued that even if the BX was a new application, mailed notice to abutters is not required since R.I. Gen. Laws § 3-7-7(a)(4) only requires notice by newspaper

for a BX application. The Intervenor argued that as this matter relates to a transfer of existing licenses pursuant to R.I. Gen. Laws § 3-5-19, no mailed notice was required.

The Board agreed with the Intervenor and argued that this was a transfer of all licenses.

D. The Licenses at Issue

The issue is very simple and revolves around what liquor licenses were held by the Transferor and whether they could be transferred.⁵ If the liquor licenses were renewed and did not expire, they exist to be transferred. If the liquor licenses had been revoked or expired, they could not be transferred and a new application for liquor licenses would have had to be filed. See *Baker v. Department of Business Regulation*, 2007 R.I. Super. Lexis 55; *Green Point Liquors, Inc. v. McConaghy*, 2004 WL 2075572 (R.I.Super. 2004); and *Marty's Liquors, Inc. v. Warwick Bd. of License Com'rs*, 1985 WL 663587 (R.I.Super. 1985). See also *Oasis Liquors v. Bureau of Licenses, City of Providence*, DBR 04-L-0066 (12/30/04) (failure to file a renewal of a liquor license resulted in the license expiring without the preservation of any renewal rights under R.I. Gen. Laws § 3-7-6).

The Appellants argued that there was no evidence that the Transferor's liquor licenses were renewed prior to expiration. However, after receiving the Appellants' argument, the undersigned

⁵ 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.

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.

requested further documentation regarding the Transferor's renewal application for the transferred License. The documentation provided indicated that the Transferor filed a renewal application and said application was advertised and approved by the Board on November 2, 2015 and the appropriate renewal fees paid on November 30, 2015.⁶

The Board cannot change the nature or existence of licenses by "treating" the licenses as something else or by calling a transfer application a new application or vice versa. The Board cannot change the nature of a license by advertising it as a new application when it is actually a transfer application.⁷ Nor can the Board transfer a license that has expired and no longer exists. However, in this matter, all information supports the conclusion that the License existed to be transferred and the City gave the appropriate required statutory notice for a transfer of the License.

⁶ While the documents provided were not testified to by the City Clerk, the Secretary of State's office website contained the agenda for the Board's November 2, 2015 meeting. See <http://www.sos.ri.gov/documents/publicinfo/omdocs/notices/4749/2015/187470.pdf>

It should be noted that the Secretary of State's office website listed minutes for the November 5, 2015 meeting for the November 2, 2015 meeting so that the website information for the minutes for November 2, 2015 could not be compared to the documents provided by the City. See *Arnold v. Lebel*.

⁷ During these hearings, there was much discussion about a prior Department decision. On July 8, 2010, the Department issued an order in *JD/Hallmark Properties v. City of Providence Board of Licenses; Karma Inc., Intervenor*, DBR No. 10-L-003 and on July 15, 2010, the Department vacated that order. On November 9, 2010, a final decision was issued in the matter in *Provident Properties LLC v. City of Providence, Board of Licenses; Karma Inc., Intervenor*, DBR No. 10-L-003 (Provident Properties, LLC substituted in for JD/Hallmark, Inc.). Initially, the Department remanded the matter because of notice issues but in the order to vacate, the Department discussed how a transfer of a license without relocation does not require that notice must be given by mail. In that case, the transferor had a BV, BX, and N license. According to the order to vacate, the Board considered the BV license was being transferred but treated the application for the BX and N as applications for new licenses. The order to vacate indicated that it was unclear why the Board chose to treat the applications for the BX and N as new applications but to treat the BV as a transfer application. The order to vacate indicates the Board's policy in 2010 was apparently not to transfer BX or N licenses; however, it should be noted that the decision regarding the application was made in the context of the Board moving to revoke all licenses.

The order found that notice need not be given to the 200 feet abutters for the BV transfer, and since the BX and N licenses already existed at that location but were being treated as a new application, it was unnecessary to give mailed notice to the 200 feet abutters for the BX and N licenses. Said Order stated that the purpose of the mailed notice to abutters is to provide notice to abutters of new licenses at a location either by a transfer or a new application.

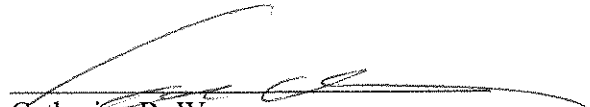
The final decision elaborated on the context of the issue of the status of these licenses because the Board had indicated prior to the transfer of the licenses that it would revoke the transferor's licenses. The decision reviewed the Board's handling and process of its discipline on the transferor's licenses and found that they had not revoked the licenses prior to the transfer applications being filed. Thus, there were licenses available to be transferred. In a footnote, the decision discussed that whether an application is new or a transfer affects the type of notice to be given so that the Board must be careful in determining the type of application and ensuring compliance with statutory notice requirements. Nonetheless, the Board cannot change what license exists or does not exist by what it labels it.

IV. RECOMMENDATION

Based on the forgoing, the undersigned recommends that the motion to remand this matter be denied.

A hearing date for the full hearing will be determined in conjunction with the parties.

Dated: April 26, 2016

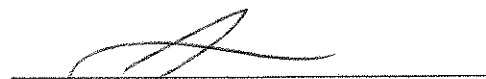

Catherine R. Warren
Hearing Officer

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: 4/28/16


Macky McCleary
Director

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 24th day of April, 2016, that a copy of the within Order was sent by first class mail, postage prepaid and by electronic delivery to Mario Martone, Esquire, and Stephen Ryan, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903, Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, R.I., and John J. Garrahy, Esquire, 2088 Broad Street, Cranston, R.I. 02905 and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 68, Cranston, Rhode Island.

