



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. INCIDENT AT ISSUE

Based on the representations of the parties, at about 2:15 a.m. on October 8, 2018, gunshots were fired outside the Appellant's location and the shooter had been inside the club. See police report submitted by Appellant. The police obtained outside video from another business showing the shots fired outside. The Appellant admitted that it purposely erased the inside security video from the relevant date. The Appellant represented that its owner testified before the Board that there were no incidents inside prior to the shooter exiting. The Board represented that the shooter exited at 2:10 a.m. with two (2) other individuals. The Board represented that the police were flagged down after the shooting and three (3) witnesses told the police about the shooting and one of the Appellant's security staff came over and told the witnesses they did not know anything (expletive deleted) and the Appellant's staff also interfered in the questioning of other witnesses.

### IV. ARGUMENTS

The Appellant argued the Board admitted that there was no nexus between the shooting and the Appellant but that the Board chose to impose restrictions on the entertainment license as a way to avoid the Department's review. The Appellant argued that usually entertainment licenses

do not fall under the Department's jurisdiction, but to restrict the hours of operation on a Class N (nightclub) licenseholder's entertainment license impacts the liquor license since without the entertainment license, the Appellant cannot promote its nightclub business. The Appellant represented it has a Class BVX license as that is required for a Class N license, but it is a limited Class BVX license because it holds a Class N license.

The Board argued that the Department does not have jurisdiction over entertainment licenses and that there were grounds for the Board to suspend the liquor license for 13 days and restrict the entertainment license's hours to 11:00 p.m. for 90 days and to impose a mandatory detail for when the Appellant is opened. The Board argued that it based its sanctions on the following: the finding that the club owner and security interfered in a police investigation right after the shots were fired as well as later erasing the relevant inside security video and that contrary to earlier representations by the Appellant to the Board that it would station security outside the venue at closing time, it had not done so that night. The City agreed with the Board's arguments.

The parties agreed that the Appellant was still able to sell liquor until its closing time despite the curtailment of the entertainment license's hours of operation. The Board further pointed out that the Appellant could still play house music after 11:00 p.m., but just cannot have a disc jockey or band after 11:00 p.m. during the limits on the hours of operation for the entertainment license.

## V. DISCUSSION

The Department does not have authority over entertainment licenses. The entertainment license is separate from a liquor license and is issued by the City of Providence. See R.I. Gen. Laws § 5-22-1 *et seq.* and Providence City Ordinance Article X section 193 *et seq.* Appeals to the Department pursuant to R.I. Gen. Laws § 3-7-21 or pursuant to R.I. Gen. Laws § 3-2-2 only relate to the liquor licenses held by an appellant. See *El Nido v. Goldstein*, 626 A.2d 239 (R.I. 1993)

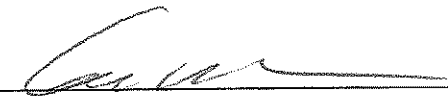
(victualing license is a separate and distinct license from a liquor license).<sup>2</sup> Licenseholders have other avenues of appeal for their other licenses. The Rhode Island Supreme Court has held that when a town council acts in a quasi-judicial manner and does not provide for a right of appeal, 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); and *Eastern Scrap Services, Inc. v. Harty*, 341 A.2d 718 (R.I. 1975).

## VI. RECOMMENDATION

Based on the foregoing, the Department does not have jurisdiction over the entertainment license so it has no authority to rule on a motion to stay the order by the Board limiting the hours of operation of the Appellant's entertainment license.

The Appellant also appealed the 13 day suspension of its liquor license. The Department has authority to review sanctions on a liquor license; however, no stay was requested because that suspension has been served. A hearing is scheduled below on that appeal.<sup>3</sup>

Dated: 10/25/18

  
Catherine R. Warren  
Hearing Officer

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<sup>2</sup> See *M&M Food Service, LLC d/b/a Millonzi Fine Catering v. City of Providence, Board of Licenses*, DBR No. 16LQ017 (11/18/16) (order) (Department does not have jurisdiction over appeals of licenses other than liquor licenses) and *334 South Water LLC d/b/a Mile and a Quarter v. City of Providence, Board of Licenses*, DBR No. 16LQ007 (5/6/16) (order) (Department does not have jurisdiction over appeals of licenses other than liquor licenses).


<sup>3</sup> The Board indicated that it may argue that the appeal of the already served liquor license suspension is moot. At hearing, the parties may address any issues on the liquor suspension appeal. If the Appellant decides not to pursue this appeal, it must inform the Department.

**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: 10/25/18

  
for Liz Tanner, Esquire  
Director

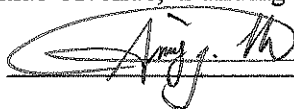
**A hearing will be held on November 8, 2018 at 9:30 a.m. at the Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.<sup>4</sup>**

**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 26<sup>th</sup> day of October, 2018 that a copy of the within Order was sent by electronic delivery and first class mail, postage prepaid, to the following: Mario Martone, Esquire, and Stephen Ryan, Esquire City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903 Mmartone@providenceri.com and sryan@providenceri.com, Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904, peter330350@gmail.com, and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, R.I. 02889 ldatty@gmail.com and by hand-delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 60-1, Cranston, R.I. 02920.

  
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<sup>4</sup> The Appellant is responsible for the stenographer. If this date is inconvenient with a party(ies), the party shall contact the other party and hearing officer to reschedule.