

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.*

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. STATUTORY BASIS FOR REVOCATION OR SUSPENSION

R.I. Gen. Laws § 3-5-21 states in part 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.

(b) Any fine imposed pursuant to this section shall not exceed five hundred dollars (\$500) for the first offense and shall not exceed one thousand dollars (\$1,000) for each subsequent offense. For the purposes of this section, any offense committed by a licensee three (3) years after a previous offense shall be considered a first offense.

The revocation of a liquor license is a relatively rare event and is reserved for a severe infraction or a series of smaller infractions that rise to a level of jeopardizing public safety. See *Stagebands, Inc. d/b/a Club Giza v. Department of Business Regulation*, 2009 WL 3328598 (R.I. Super.) (disturbances and a shooting on one night justified revocation) and *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation when had four (4) incidents of underage sales within three (3) years). See also *Cardio Enterprises, d/b/a Comfort Zone Sports Bar v. Providence Board of Licenses*, DBR No.: 06-L-0207 (3/29/07) (killing of patron with incident starting inside and escalating outside justified revocation); *PAP Restaurant, Inc. v. d/b/a Tailgate's Grill and Bar v. Town of Smithfield, Board of License Commissioners*, DBR No.: 03-L-0019 (5/8/03) (series of infractions justified revocation).

Thus, the Department will uphold a revocation where an incident is so egregious as to justify revocation without progressive discipline. However, the Department will decline to uphold a revocation where the violation is not so egregious or extreme and the local authority has not engaged in progressive discipline. *Infra.*

V. DISCUSSION

The information received by the undersigned is based on representations of the parties. A transcript was not available; however, audio of the Board's hearing was available online and the undersigned listened to part of the March 7, 2018 hearing.⁴

None of the violations found by the Board related to disorderly conduct.

The Board found three (3) after-hour violations; two (2) anti-nudity violations; two (2) violations of entertainment without a license; and a bottle sale violation.⁵

The Appellant agreed to the after-hour violations. The Appellant disputed the anti-nudity violations and the bottle sale violation. The finding of having entertainment without an entertainment license was for December 2 and 16, 2017. The Appellant said it would agree to those violations if it was shown that an entertainment license had not been obtained for those two (2) dates.⁶ While entertainment is not within the jurisdiction of the Department, the Board argued that violations of entertainment is a violation of conditions of liquor licensing.

A. Arguments

The Appellant argued that there would be irreparable harm if it closes early and there is no danger to the public if a stay is granted. The Appellant represented that it would not object to a mandatory police detail. The Appellant argued that all the violations (ones it agreed to and those it disputed, even if proved) do not justify the revocation of the BX license.

⁴ The website provides a link to the audio for each Board meeting.
<https://providenceri.iqm2.com/Citizens/Calendar.aspx>

⁵ The various dates involved were October 5, November 12, 17, 23, and December 2 and 16, 2017.

⁶ At the Board's December 13, 2017 meeting, the Appellant received entertainment for December 14 to 17, 2017 so not for December 16, 2017.

<https://providenceri.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=6514&Inline=True>

The City and Board argued that while none of the violations were for disorderly conduct or very serious in and of themselves, they constitute a series of infractions over three (3) months that in light of the Appellant's past history justify the revocation of the 2:00 a.m. license.

B. Discipline Prior to March 22, 2018

The License was transferred to the Appellant on September 16, 2016. The Appellant received a two (2) day License suspension and an \$1,750 administrative penalty for hours of operation violations, sale of tobacco without a license, and permitting smoking in a public place in March, 2017 for violations in November, 2016.⁷ In addition, the Department imposed a 30 day suspension of the Appellant's BV license and 180 day suspension of its BX license on September 14, 2017. *Ciello, LLC d/b/a Club Luv v. Providence of Board of Licenses*, DBR No.: 17LQ008 (9/14/17). The parties represented that the Department's 2017 decision was appealed to Superior Court and the Court stayed the late night suspension on December 7, 2017.

C. Liquor License

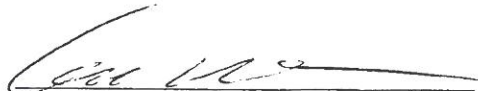
The Department has consistently followed progressive discipline barring an egregious act. Applying the stay criteria, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. In this matter, it cannot be ascertained which party will prevail on some of the allegations and whether the sanction is justified without a full hearing. There are no allegations of public safety issues. If a stay is not granted for the revocation or on hours of operation, the Appellant will not have a meaningful appeal. Thus, in its discretion the Department will maintain the *status quo* prior to the events of October, November, and December, 2017 except that the stay will be conditioned on a police detail after 10:00 p.m. on Friday and Saturdays and any other day that the Class BX license is statutorily in effect.

⁷ See *Ciello, LLC d/b/a Club Luv v. Providence of Board of Licenses*, DBR No.: 17LQ008 (9/14/17).

VI. RECOMMENDATION

Based on the foregoing, the undersigned recommends that the Appellant's motion for a stay of the revocation of its BX liquor license be granted with the condition of the police detail as set forth above.⁸

Dated: March 28, 2018

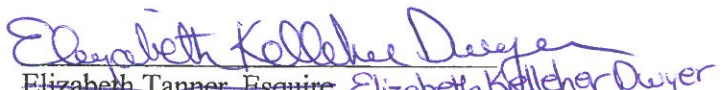

Catherine R. Warren
Hearing Officer

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
X _____ MODIFY (see attached)

Dated: March 29, 2018

as designee for

Elizabeth Tanner, Esquire Elizabeth Kelleher Dwyer
Director

A hearing on the merits will be held on April 17, 2018 at 1:30 p.m. at the Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI.⁹

⁸ The Board imposed other conditions on the Appellant's liquor license (e.g. social media; name of manager), but the Appellant is not appealing those conditions. If the Appellant cannot obtain a police detail on a required night, it cannot open that night.

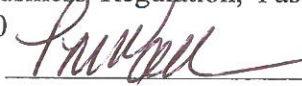
⁹ The Appellant is advised that it is responsible for a stenographer for the hearing pursuant to R.I. Gen. Laws § 3-7-21. If this date is inconvenient, the parties shall notify the undersigned and a new mutually convenient date will be schedule.

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 30 day of March, 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, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903 Mmartone@providenceri.com, Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, RI 02904, peter330350@gmail.com, and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 02889 ldatty@gmail.com and by hand-delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920



DIRECTOR'S MODIFICATION OF RECOMMENDED ORDER

The following is inserted at the end of the second paragraph in Section IV:

“See also, *Ice Lounge, Inc. d/b/a Ice Lounge v. The City of Providence Board of Licenses*, DBR No.: 15LQ008 (7/22/15) (repeated violations justified revocation of BVX license).”

Sections V(C) and VI are deleted and replaced with the following:

“C. Liquor License

The Board determined to revoke/not renew the Appellant’s extended hours license and require midnight closure for a period of sixty (60) days based upon a number of incidents, which violated statutes or ordinances. Appellant had been the subject of a prior action by the Board that was appealed to DBR and resulted in a September 14, 2017 Decision. The current violations include three after-hour infractions that the Appellant does not contest, which occurred while the September 14, 2017 Decision of the Department was in effect. The three after-hour violations were in direct contravention of the Department’s Decision.¹

In considering a request for stay, the Department may, in its discretion, determine to maintain the *status quo*. The Department declines to do so here. The Appellant has not made the required strong showing that it will prevail on the merits of its appeal, that it will suffer irreparable harm if the stay is not granted and that the issuance of a stay will not harm the public interest.

¹ This Decision was appealed to Superior Court and the Court stayed the late-night suspension on December 7, 2017. The three after-hour violations referenced here occurred prior to the Superior Court stay.

Based upon the foregoing, the Appellant's request to stay the Board's decisions of March 22, 2018, is denied."