

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
1511 PONTIAC AVENUE, BLDG. 69-2  
CRANSTON, RHODE ISLAND 02920**

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<b>Pasha Lounge, Inc. d/b/a Pasha Hookah Bar, Appellant,</b>	:	
<b>v.</b>	:	<b>DBR No.: 17LQ007</b>
<b>City of Providence, Board of Licenses, Appellee.</b>	:	

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**ORDER ON THE MOTION FOR RECONSIDERATION**

**I. Introduction**

This matter arose from an appeal filed by Pasha Lounge, Inc. d/b/a Pasha Hookah Bar (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding decisions taken by the City of Providence, Board of Licenses (“Board”) regarding the Appellant’s Class BVX license (“License”). A hearing was held on July 24, 2017 before the undersigned.<sup>1</sup> A decision was issued on October 18, 2017. On October 20, 2017, the Appellant filed a motion for reconsideration (“Motion”). A motion for reconsideration is allowed by Section 12.9 of 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearings* (“DBR2”). Pursuant to Section 2.11 of DBR2, the Board had ten (10) days to file an objection to the Motion. The Board did not file an objection and stated the record spoke for itself. It is within the hearing officer’s discretion if a hearing should be held. A hearing is not needed and a decision can be made on the motion and objection thereto.

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<sup>1</sup> Pursuant to a delegation of authority from the Director of the Department.

**II. Jurisdiction**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and DBR2.

**III. Issue**

Whether the Motion for Reconsideration should be granted.

**IV. Standard of Review**

Section 12.9(A) of DBR2 states as follows:

At any time after the issuance of a final order of the Director, any Party may, for good cause shown, by motion petition the Director to reconsider the final order. The petitioner shall file his/her motion within twenty (20) days of the issuance of the final order and shall set forth the grounds upon which he/she relies. The Director may grant the motion for reconsideration within his/her discretion and shall order such relief as he/she deems appropriate under the circumstances.

In *In Re Denisewich*, 643 A.2d 1194 (R.I. 1994), the Court found that a quasi-judicial body with authority similar to those exercised by state agencies had the inherent power and was obligated to reconvene to consider testimony only recently made available. See also *Perrotti v. Solomon*, 657 A.2d 1045 (R.I. 1995). In both of those cases, new evidence came to light that had the possibility of changing the outcome of the initial decisions by the administrative bodies so it was proper to re-open the cases.

In addition to case law, the Department has previously addressed the standard to be met in a Motion for Reconsideration with the Department as follows:

The public policy rational behind this procedure is not to provide the Respondent a new hearing, but to address specific errors in the consideration of factual or legal issues that the Respondent may raise. Factual grounds raised by Respondent may not be general conclusory statements but must be specifically detailed and cite to the relevant portions of the administrative record. Likewise, legal grounds may not be general conclusory statements but must cite to specific legal cases or legal principles that upon which the Respondent relies. It is also appropriate in many cases for the Respondent to include a memorandum of law. *In the Matter of Louis Annarummo*, DBR No. 99-L-0069 (8/5/02).

## V. Discussion

This matter initially came before the Department on the Appellant's motion for stay filed on May 18, 2017 in relation to the Board's orders imposing certain restrictions on the Appellant pending the Board's hearing. The initial motion came for hearing on May 22, 2017 and by order dated May 23, 2017, the Department remanded this matter to the Board. On or about June 7, 2017, the Board made a final decision in this matter and imposed a variety of sanctions including the revocation of the Appellant's Class BVX license and conditioning the Appellant's BV license on the operation of security video system. The Appellant then filed a new motion to stay the Board's decision and a hearing was held on June 9, 2017 with the parties represented by counsel. By order dated June 12, 2017, this matter was remanded to the Board for it to clarify its granting of the Class BVX license to the Appellant on April 19, 2017.<sup>2</sup>

It was represented to the undersigned that on June 21, 2017, the Board found that the Class BVX license granted on April 19, 2017 was for 90 days and that it would condition the Appellant's Class BV license on maintaining the video system in working order and providing the police access to the video in the event of an incident at the establishment. On or about June 22, 2017, the Appellant requested a stay of the Class BVX

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<sup>2</sup> The Department's June 12, 2017 order indicated that the audio recording of the April 19, 2017 Board hearing was unclear so remanded it to the Board for clarification.

license revocation and a decision regarding the granting of a short-term BVX license and the security camera condition of license. No further hearing was held on this stay request and an order was issued on June 23, 2017 denying a stay of the revocation of the Class BVX license, but stating that a decision would be made regarding the type of license issued and the security video condition after hearing/arguments.

At the Department hearing, the parties addressed the issue that the Board issued the Class BVX license for 90 days. It was agreed that the Board did not issue the BVX license with a 90 day review, but rather issued the license for 90 days which is shorter than if such a license was just issued as a full-term license.<sup>3</sup> Thus, at hearing it was undisputed that the Board said the Class BVX license would expire/terminate on July 13, 2017.<sup>4</sup>

The Appellant's Motion included the April 19, 2017 transcript which was not part of the certified record. The Appellant represented that it only received the transcript of the Board's April 19, 2017 hearing on October 19, 2017 (after the Department's decision issued). The Appellant argued that the April 19, 2017 transcript showed that the Board despite the agreement at the Department's July 24, 2017 hearing actually did not grant the BVX license as just a 90 day license, but rather granted it with a 90 day review. The

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<sup>3</sup> At hearing, the parties agreed that the 2:00 a.m. License that issued was for a finite period. The Board indicated at the Department hearing that this could include a license issued for a finite period that only could be extended on review by the Board. In other words, a License could be issued for 90 days and a review set but the review would have to positively extend the license or else it would expire. The July 24, 2017 Department transcript shows that all parties were in agreement that the Board had not issued a license subject to a 90 day review. The Appellant's attorney represented that the Board specifically said the license expired on July 13, 2017 and had not been issued subject to a 90 day review (to see how the licensee was proceeding rather than to decide whether to extend the license a further period of time). See July 24, 2017 transcript at pp. 6, 19.

<sup>4</sup> A further review of the certified record available to the undersigned indicates that the transcript that was provided by the Board as the June 21, 2017 transcript by the Board was actually the June 7, 2017 transcript on the Board's final decision.

Appellant argued its motion based on the following from the April 19, 2017 hearing in relation to the issuance of the Class BVX license to the Appellant by the Board:

I'm prepared to make a 2:00 a.m. with a 90-day review, a security plan, detailing the lot and exit because the main (sic) come back in 90-days we really want you to focus on that parking lot.

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The review will come in ninety days and we'll hear from everyone at that time, the public and any problems in the area. April 19, 2017 transcript at pp. 16-17.

## VI. Conclusion

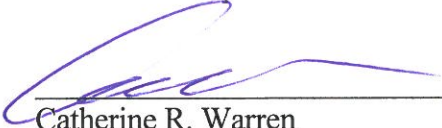
It is unclear whether the Board had the April 19, 2017 transcript before it at the June 21, 2017 hearing. In light of this "new evidence," it is appropriate for the Board to consider the actual transcript. Therefore, this matter is remanded for the following:

1. In light of the Board's April 19, 2017 transcript, does the Board still agree it issued a finite 90 day Class BVX license to the Appellant that terminated on July 13, 2017.

2. If the Board decides it did not issue a finite 90 day license, but instead issued a Class BVX license with a 90 day review, the Board shall revisit the issue of the disorderly conduct allegations in light of the fact that the license was not about to terminate in approximately 30 days from the date it voted for "revocation." The Board shall consider that if a full BVX license was indeed issued with a 90 day review whether the alleged disorderly conduct merits revocation, a suspension, other penalties/conditions, or a combination thereof (including any agreement with the Appellant).

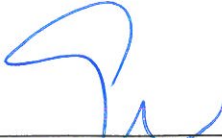
As recommended by:

Date: 11/7/17

  
Catherine R. Warren  
Hearing Officer

I have read the Hearing Officer's recommendation and I hereby ADOPT/REJECT the recommendation of the Hearing Officer in the above-entitled Order.

Date: 11/27/17

  
~~Elizabeth Kelleher Dwyer~~ *Elizabeth Tanner*  
~~Interim Director~~ *Director*

**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 28 day of November, 2017 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, Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, RI 02904, Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 02889 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

  
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