



## 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.

In revoking or suspending a liquor license, it is not necessary to find that a liquor licensee affirmatively permitted patrons to engage in disorderly conduct. See *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964). The same statute also forbids a licensee from permitting any laws of Rhode Island from being violated. A liquor licensee has the “responsibility to control the conduct of its patrons both within and without the premises in a manner so that the laws and regulations to which the license is subject will not be violated.” *Schillers, Inc. v. Pastore*, 419 A. 2d 859 (R.I. 1980).

A liquor licensee is accountable for violations of law that occur on its premises and outside. *Vitali v. Smith*, 254 A.2d 766 (R.I. 1969). It is not a defense that a licensee is not aware of the violations or provided supervision to try to prevent a violation. While such a responsibility may be onerous, a licensee is subject to such a burden by the legislature and accepted such conditions by becoming licensed. *Therault v. O’Dowd*, 223 A.2d 841, 842-3 (R.I. 1966). See also *Scialo v. Smith*, 99 R.I. 738 (R.I. 1965).

#### V. DISCUSSION

The information received by the undersigned is based on the representations of the parties.

A transcript was not available.

It was undisputed that Paul Troia ("Troia") is the Appellant's owner. He was notified on October 18, 2018 that a hearing would be held the License on October 22, 2018 because of his arrest. The notice of hearing indicated that he had been arrested for drug trafficking. However, the parties agreed that he was arrested for maintaining a narcotics' nuisance and has not been indicted yet. The parties represented that three (3) patrons have been arrested for drug trafficking and distribution from the Appellant's parking lot and that these individuals are being held without bail. It was undisputed that Troia closed without any order from the Board from October 18, 2018 to October 22, 2018, the day at hearing. On October 22, 2018, Troia did not have a lawyer so the Board said it would hold a hearing on November 15, 2018. The police made a presentation which consisted of the police major reading a summary of what happened, but no direct evidence was presented. The Board ordered the Appellant shut until November 15, 2018. It is unclear on what authority the Board based its power to close the Appellant for that long as it appears a full hearing was not held. No reference was made to any emergency power.

On November 15, 2018, it was undisputed that the police major again read a summary of the investigation of the three (3) patrons that were arrested. There was no direct testimony regarding the investigation. There was an allegation that Troia told the patrons to take (the drug dealing) outside, but there was no evidence presented regarding what this meant or how this happened. There was no cross-examination of the police major. The police report was not turned over to the Appellant. A motion was made before the Board to suspend the License to December 1, 2018 and impose an administrative penalty which was defeated. Another motion was made before the Board to revoke the License which was defeated. The Board then scheduled a hearing on December 3, 2018 and ordered the Appellant to remained closed. On November 15, 2018, the police made no representation of any safety issues if the Appellant stayed open pending a decision.

Apparently, the Board does not plan to take any new evidence on December 3, 2018. It was undisputed that the Appellant has been open for four (4) years and has no disciplinary history.

**A. Arguments**

The Appellant argued that it has a substantial likelihood of success on the merits because the facts do not warrant such a long suspension or revocation. The Appellant relied on *Tel Aviv, LLC d/b/a Tel Aviv v. City of Providence, Board of Licenses*, DBR No. 16LQ015 (12/8/16) in which a liquor licensee had its license suspended for 14 days after its manager was arrested for selling drugs. The Appellant argued that it has already been closed for approximately 30 days and is suffering irreparable harm because of lost employees, patrons, and good will.

The Appellant further argued that if a stay is not granted then a hearing would be meaningless as it will have been out of business for so long. The Appellant also argued that the Board has not applied progressive discipline and essentially imposed a *de facto* revocation without hearing. Finally, the Appellant requested that the Department take jurisdiction of this matter.

The Board admitted that the Appellant had compelling arguments in terms of its arguments for granting a stay. The Board did not address the issue of substantial likelihood of success on the merits or irreparable harm or any safety issues. The Board represented that it was holding an executive session on November 26, 2018 at which time it hoped it could resolve this matter and suggested that the Appellant send any proposed settlement offers prior to that date. The Board strenuously objected to the Department taking jurisdiction of this matter.

**B. Discipline Prior to October 17, 2018**

There has been no prior discipline by the Appellant.

**C. Liquor License**

The Department has consistently followed progressive discipline barring an egregious act. In the context of a liquor licensing, the Superior Court has found that the purpose of progressive

discipline by the local liquor licensing authority is to impose a reasonable sanction that will deter the licensee from repeatedly violating the law and when after the imposition of progressive discipline, the licensee fails to conform with the law, revocation is justified. See *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.).

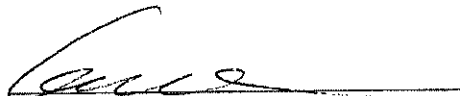
Applying the stay criteria, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. There is no dispute that patrons have been arrested for selling drugs in the parking lot. Troia has been arrested as well. However, the nature of the Troia's conduct in relation to the patrons is in dispute. While the facts are in dispute, the issue in this matter is what is the appropriate sanction for the alleged conduct (if proved). The conduct in *Tel Aviv, LLC d/b/a Tel Aviv* warranted a 14 day suspension.

Applying progressive discipline to this matter would be warranted and appropriate and based on the Appellant's prior disciplinary history and the nature of the alleged conduct (assuming proved), the Appellant has a strong likelihood that no further discipline will be imposed. Indeed, the Board is hopeful this matter can be resolved next week prior to the December 3, 2018. There was no evidence of any public safety issue if the Appellant remains open pending any settlement or a decision on December 3, 2018.

**VI. RECOMMENDATION**

Based on the foregoing, the undersigned recommends that the Appellant's motion for a stay of the suspension of its liquor license be granted pending the Board's decision on December 3, 2018.

Dated: 11/20/18

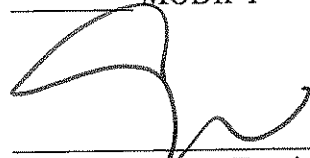
  
Catherine R. Warren  
Hearing Officer

**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  
 MODIFY

Dated: 11/20/18


  
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Elizabeth Tanner, Esquire  
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 20<sup>th</sup> day of November, 2018 that a copy of the within Order was sent by email and first class mail, postage prepaid, to the following: John M. Verdecchia, Esquire, Law Office of John M. Verdecchia, 400 Reservoir Ave., Ste 1C, Providence, R.I. John.Verdecchia@verizon.net; Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, RI nhemond@darroweverett.com and by hand-delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920

  
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