

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
PASTORE COMPLEX  
1511 PONTIAC AVENUE  
CRANSTON, RHODE ISLAND

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Pasha Lounge, Inc. d/b/a Pasha Hookah Bar,  
Appellant,

v.

City of Providence, Board of Licenses,  
Appellee.

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DBR No.: 17LQ007

**ORDER REGARDING MOTION FOR STAY**

**I. INTRODUCTION**

This matter arose from a motion for stay filed by Pasha Lounge, Inc. d/b/a Pasha Hookah Bar (“Appellant”) regarding a final order issued on or about June 7, 2017 by the City of Providence, Board of Licenses (“Board”). Initially this matter came before the Department on the Appellant’s motion to stay during the hearing in relation to the Board’s orders imposing certain restrictions on the Appellant pending the Board’s hearing. That matter came for hearing on a stay request on May 22, 2017 before the undersigned in her capacity as Hearing Officer delegated by the Director of Department. 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 (“License”) and conditioning the Appellant’s BV license on the operation of security video system that must be available to the police upon request. The Appellant filed a motion to stay decision and a hearing was held on June 9, 2017 with the parties represented by counsel.

## II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-5-1 *et seq.*, 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. STANDARDS FOR DISORDERLY CONDUCT

R.I. Gen. Laws § 3-5-23 states in part as follows:

(b) If any licensed person permits the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood . . . he or she may be summoned before the board, body, or official which issued his or her license and before the department, when he or she and the witnesses for and against him or her may be heard. If it appears to the satisfaction of the board, body, or official hearing the charges that the licensee has violated any of the provisions of this title or has permitted any of the things listed in this section, then the board, body, or official may suspend or revoke the license or enter another order.

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. Rather, the Rhode Island Supreme Court held in *Cesaroni v. Smith*, 202 A.2d 292, 295-296 (R.I. 1964) as follows:

[T]he legislature, in enacting the pertinent provision of the statute, intended to impose upon such licensee the obligation to maintain an efficient and affirmative supervision over the conduct of his patrons in his place to such an extent as is necessary to maintain order therein. It is our opinion that as a practical matter a licensee assumes an obligation to affirmatively supervise the conduct of his patrons so as to preclude the generation therefrom of conditions in the neighborhood of like character to conditions that would result from maintenance of a nuisance therein.

It is to be conceded that this imposes upon a licensee an onerous burden in the management of the licensed premises. It is, however, within the authority of the legislature, the liquor traffic being peculiarly within the police power of the state.

Furthermore, the Court found that "disorderly" as contemplated in the statute meant as follows:

The word "disorderly" as used here contemplates conduct within premises where liquor is dispensed under a license that causes either directly or indirectly conditions in the neighborhood in annoyance of or disturbing to the residents thereof. *Id.* at 296.

Thus, 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 licensee is responsible for disorderly conduct inside its premises and disorderly conduct outside its premises that can be directly or indirectly linked to activities inside the premises.<sup>1</sup>

## V. DISCUSSION

At both stay hearings, the parties represented that the Appellant’s Class BVX, a late license, was a six (6) month probationary license issued by the Board in February that came up for review/ended in July of this year. The Appellant indicated that when this matter went to a full hearing, it would argue that such a probationary license is not within the Board’s authority to issue. The Board indicated that a transcript of the hearing of when the probationary BVX license was issued would show that the BVX license was issued as a probationary license.

A review of the Secretary of State’s website<sup>2</sup> shows that Appellant’s application for a Class BVX license was approved for advertising by the Board on March 27, 2017.<sup>3</sup> On April 19, 2017, the Board minutes reflected that the License was approved with a 90 day review on July 19, 2017.<sup>4</sup> The Board now is apparently putting audio recordings of its meeting online and an audio recording of this April 19, 2017 approval indicates that the License approved was “probationary,” but most of the audio is very hard to understand.<sup>5</sup> The Board’s June 7, 2017 decision refers to the License as probationary.

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<sup>1</sup> See May 23, 2017 order for an extended discussion of the disorderly conduct case law.

<sup>2</sup> The undersigned informed the parties that she would try to confirm the date the License was issued by reviewing the minutes of such meetings on the Secretary of State’s office website.

<sup>3</sup> <http://www.sos.ri.gov/documents/publicinfo/omdocs/minutes/4749/2017/52298.pdf>

<sup>4</sup> <http://www.sos.ri.gov/documents/publicinfo/omdocs/minutes/4749/2017/52744.pdf>

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<https://providenceri.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=5280&MinutesItemID=56608&Format=Minutes>

If this License was approved only for 90 days subject to an approval for another 90 days on July 19, 2017, the analysis of the stay is different than if the License was granted subject to a 90 day review. The idea that that License “expires” in July went to the crux of the Board’s and City’s arguments that the *status quo* is maintained by not issuing a stay as the Appellant operated without a BVX until this year [April, 2017] and remains open [but without the BVX] and the license will “expire” in a month. The Appellant argued that the revocation was based on less than credible testimony and a full hearing is needed regarding the incident at night to determine what happened.

**VI. RECOMMENDATION**

Based on the forgoing, the undersigned recommends the following: this matter is remanded to the Board in order for it to review its proceedings on April 19, 2017 and detail the status of what was issued: was the License issued considered a 90 day probationary late night license ending on July 19, 2017 or a full late license subject to a 90 day review. Additionally, the issue of the condition of licensing being subject to the police being able to take the Appellant’s security cameras video at any taken was raised at hearing. While conditions are allowed to be imposed on licensees,<sup>6</sup> there is a question whether this condition is overly broad. In this remand, the Board shall also revisit that condition.

Dated: 6/12/17

  
Catherine R. Warren  
Hearing Officer

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<sup>6</sup> Pursuant to *Thompson v. East Greenwich*, 512 A.2d 837 (R.I. 1986), a town may grant a liquor license upon conditions that promote the reasonable control of alcoholic beverages.

**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:

X ADOPT  
\_\_\_\_ REJECT  
\_\_\_\_ MODIFY

Dated: 20/12/17


  
Scottye Lindsey  
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 12 day of June, 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 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

  
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