

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**  
**DEPARTMENT OF BUSINESS REGULATION**  
**JOHN O. PASTORE COMPLEX**  
**1511 PONTIAC AVENUE**  
**CRANSTON, RI 02920**

<b>Ada’s Creations, Inc.</b>	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	<b>DBR No.: 13LQ056</b>
	:	
<b>The City of Providence Board of Licenses,</b>	:	
<b>Appellee.</b>	:	

**RECOMMENDATION AND INTERIM ORDER**  
**GRANTING STAY PENDING APPEAL**

On May 24, 2013, the City of Providence Board of Licenses (“Board”) issued a liquor licensing decision imposing an eight thousand dollar (\$ 8,000) fine and a three day (3) suspension on Ada’s Creations, Inc. for alleged violations of the liquor laws and regulations (the “Decision”). Ada’s (“Appellant”) filed a Notice of Appeal of the Decision to the Department of Business Regulation (“Department”) on May 28, 2013. The Appellant simultaneously made a Motion for Stay, requesting that the Department stay the Decision to allow the Appellant to remain open during the pendency of the appeal.

The Department has jurisdiction over appeals of local liquor licensing decisions under R.I. Gen. Laws § 3-7-21. That section gives the Department the broad authority to “confirm or reverse the decision of the local board in whole or in part.” As the state “superlicensing authority,” the Department reviews the decisions of local boards “de novo.” *Hallene v. Smith*, 98 R.I. 360, 363, 365 (R.I., 1964)(“[w]hen § 3-7-21 is read in

its entirety, it discloses by necessary implication a legislative intent to provide licensees with a *de novo* hearing of the cause rather than an appellate review of the decision.”) R.I. Gen. Laws § 3-7-21 further empowers the Department “to make any decision or order,” including an order staying the decision of the liquor licensing authority while the appellant awaits a *de novo* hearing and Department decision. *See Burton v. Lefebvre*, 53 A.2d 456, 460 (R.I., 1947)(the stay is not automatic, but requires a Department order).

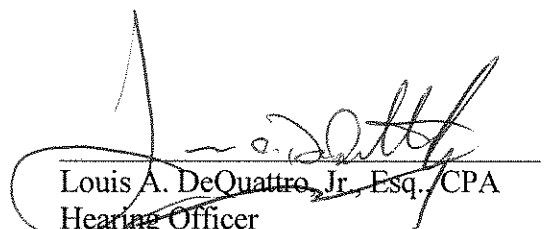
In considering a motion for a stay, effectively postponing the implementation of the disciplinary measures set forth in the local board’s decision until a Department decision is rendered, the Department has broad discretion and flexibility to balance the interests of the local authority and the general public against the interests of the licensee. In the instant case, the interests of the licensee in avoiding the Board’s disciplinary measures during the pendency of its *de novo* appeal outweigh the interests of the Board and the public in immediate closure and fines. While the alleged incidences occurred on January 19 and February 22, 2013, the Board did not hold a Show Cause Hearing until May 2, 2013 and did not render its Decision until May 28, 2013, at which time the Board determined to impose a three-day closure at the future dates of June 13-15, 2013. This delay, coupled with the fact that the Board did not invoke its emergency powers, can be reasonably construed as evidencing that immediate closure is not necessary to protect the public interest. The interest of the Appellant in a *de novo* hearing prior to imposition of disciplinary measures is significant because the economic harm that may otherwise result could be irreparable in light of the complex issue of governmental immunity and the difficult quantification of damages.

In its Notice of Appeal and Motion for Stay, the Appellant also raises the suspension of its entertainment license. However, the Department lacks jurisdiction to stay the Board's decision as it pertains to the Appellant's separate entertainment license. Appellant cites R.I. Gen. Laws § 3-7-7.3; however, that provision only confers jurisdiction when the restrictions on entertainment imposed on Class B licensees are structured as *liquor license conditions*. It is without application to the issuance of a *separate entertainment license* under R.I. General Laws § 5-22-1 *et seq.* ("city councils may license, regulate, and in those cases specifically set forth in 5-22-5, may prohibit and suppress ... shows and performances in their respective towns, conforming to law.") A licensing authority's decision to revoke, deny, or otherwise take action on a separate entertainment license under § 5-22-5 is not appealable to the Department. *See* R.I. Gen. Laws § 42-14-1 (listing the chapters with which the Department is charged with enforcing to the exclusion of chapter 5-22).

**RECOMMENDATION**

Based on the forgoing, the undersigned recommends issuing the stay of the Decision as it pertains to the liquor license, pending the outcome of the Department's *de novo* review of the case.

Date: 6/6/2013

  
Louis A. DeQuattro, Jr., Esq./CPA  
Hearing Officer  
Deputy Director & Executive Counsel


**INTERIM ORDER**

I have read the Hearing Officer's recommendation and take the following action

ADOPT

REJECT  
     MODIFY

Date: 6 June 2013

  
\_\_\_\_\_  
Paul McGreevy  
Director

Entered as an Administrative Order No.: 13-61 this 6 day of June, 2013.

**NOTICE OF APPELLATE RIGHTS**

**THIS ORDER IS REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35(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 ITSELF STAY ENFORCEMENT OF THIS ORDER.**

**CERTIFICATION**

I hereby certify on this 6<sup>th</sup> day of June, 2013 that a copy of the within Order and Notice of Appellate Rights was sent by e-mail and first class mail, postage prepaid to -

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and by email to Maria D'Alessandro, Deputy Director, Securities, Commercial Licensing and Racing & Athletics

A handwritten signature in cursive script, appearing to read "Carlo Giuseppe Spaziano", written over a horizontal line.