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

Perez Smith, LLC d/b/a Paris Bistro Lounge, Appellant,	:	
v.	:	**DBR No.: 19LQ001**
City of Providence Board of Licenses, Appellee,	:	
and Patrick Griffin,[1] Intervenor	:	

DECISION

I. INTRODUCTION

This matter arose from an appeal filed by Perez Smith, LLC d/b/a Paris Bistro Lounge ("Appellant") with the Department of Business Regulation ("Department") pursuant to R.I. Gen. Laws § 3-7-21 regarding the City of Providence, Board of Licenses' ("Board") decision on January 10, 2019 not to issue to the Appellant a Class BV liquor license that had been granted by the Board to the Appellant in March, 2018. A hearing was held on the appeal on February 4, 2019. At that time, Patrick Griffin ("Intervenor") moved to intervene to which neither party objected so the intervention was granted by the undersigned. All parties were represented by counsel and the parties rested on the record.[2]

[1] Patrick Griffin owns real estate next door to the Appellant. He operates Patrick's Pub on his property.
[2] The hearing was held before the undersigned pursuant to a delegation of authority by the Director of the Department. The transcript of hearing was received on February 13, 2019.

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.*

III. ISSUE

Whether to uphold or overturn the Board's decision not to issue to the Appellant a Class BV liquor license because the Board found that there was a place of public worship within 200 feet of the Appellant's proposed location pursuant to R.I. Gen. Laws § 3-7-19(a).

IV. MATERIAL FACTS

No testimony was taken at hearing. The radius map showing the Appellant's location and the 200 foot radius that includes the disputed place of public worship, Christ Miracle Church, located at 516 Chalkstone Avenue in Providence was entered as Joint Exhibit One (1). The 2018 annual report for Christ Miracle Church Services, Inc. located at 516 Chalkstone Avenue indicates that its business is to conduct community outreach. The 2018 annual report for Christ Miracle Church located at 516 Chalkstone Avenue indicates that its business is a religious organization and it conducts religious services, bible study, and prayer meetings. See Appellant's Exhibit One (1). There are annual reports for Christ Miracle Church Services, Inc. and Christ Miracle Church for the same location going back to at least 2008.[3] Two (2) photographs were admitted in evidence. One photograph shows the outside of a building with a large cross attached to it and a sign saying, "Christ Miracle Church A prophetic ministry Sunday Service 10:00 a.m. Please use back entrance at 111 Wayne Street."

[3] Pursuant to *Arnold v. Lebel*, 941 A.2d 813 (R.I. 2007), the undersigned informed the parties that she would review prior annual reports filings of both entities in addition to the ones provided at hearing.

The other photograph shows an awning above the door of the building. The awning says Christ Miracle Church and has a telephone number. See Intervenor's Exhibit One (1).[4]

It was not disputed that the church location is commercially zoned. The Appellant's counsel represented that the church does not have a website and its last posting on its Facebook page was in 2016. The Intervenor's counsel represented that his client reached out to the church and someone returned his call but he had not spoken directly to a person. The Appellant's counsel represented that he, the attorney, had not been able to reach anyone at the church. The parties did not dispute that no one involved in this matter had spoken to a member of the church.[5]

IV. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047, 1049 (R.I. 1994). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). The Rhode Island Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management,* 553 A.2d 541 (R.I. 1989) (citing *Cocchini v. City of Providence*, 479 A.2d 108, 111 (R.I. 1984). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the

[4] The record was left open for the Intervenor to provide copies of the photographs. The Intervenor emailed the copies to all parties the day of the hearing so the photographs are admitted as Intervenor's Exhibit One (1).
[5] The Board was requested to provide the transcript from its January 10, 2019 meeting but failed to do so. The minutes of that meeting can be found at – https://providenceri.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=8929&Inline=True.

legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

In determining the policies and purposes of the Act intended by the legislature, it is necessary to examine R.I. Gen. Laws § 3-1-1 *et seq.* in its entirety. Rhode Island implemented this statutory scheme to regulate the sale of liquor after the repeal of Prohibition. The Rhode Island Supreme Court has stated that the legislature expressly provided for state control and has adopted a system for administering such control in a manner which it deems the "most likely to be productive of the public good." *Bd. of License Comm'rs v. Daneker*, 78 R.I. 101, 107 (R.I. 1951).

B. R.I. Gen. Laws § 3-7-19(a)

R.I. Gen. Laws § 3-7-19(a) states as follows:

> Objection by adjoining property owners – Proximity to schools and churches. – (a) Retailers' Class B, C, N and I licenses, and any license provided for in § 3-7-16.8 of this chapter, shall not be issued to authorize the sale of beverages in any building where the owner of the greater part of the land within two hundred feet (200') of any point of the building files with the body or official having jurisdiction to grant licenses his or her objection to the granting of the license, nor in any building within two hundred feet (200') of the premises of any public, private, or parochial school or a place of public worship. In the city of East Providence, retailer's Class A licenses shall not be issued to authorize the sale of beverages in any building within five hundred feet (500') of the premises of any public, private, or parochial school, or a place of public worship.
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> (c) This section shall not apply to any Class B or C license holder whose license was issued prior to January 1, 1978, nor shall this section apply to, or constitute the basis of, an objection to, or disapproval of, the transfer of a Class B or C license where the location of the licensed establishment predates the location of the public, private, or parochial school, or place of public worship.

The regulation relating to the implementation of R.I. Gen. Laws § 3-7-19(a) is § 1.4.41 of 230-RICR-30-10-2 *Commercial Licensing Liquor Control Administration* which states as follows:

> Two Hundred Foot Rule – Retail The area within two-hundred feet (200') of a proposed licensed premise as referred to in §3-7-19 shall be measured from the closest point of the building constituting the proposed licensed premises to the premises of the property owner entitled to object, including the building or land or appurtenances. The licensed premise shall not be altered or expanded without the written approval of the licensing authority issuing the license.

Rice v. Board of License Commissioners of Central Falls, 88 A. 885 (R.I. 1913) found that the term "premises" when used to refer to real estate includes appurtenances and property. Thus, the measurement is from the Church property line rather the Church building.[6] The parties did not dispute how the measurement was taken by the Board from the Appellant's building to the place of worship. Instead, the parties disputed whether the place of public worship that was determined by the Board to be located within 200 feet of the Appellant was a place of public worship for the purposes of this statute. If there is a place of public worship within the 200 foot radius then the local licensing authority is without jurisdiction to grant a Class B, C, N, and I liquor license. See *Angelo J. Falcone and Janice E. Falcone*, LCA-CH-99-28 (5/16/00).

C. Arguments

The Appellant argued that a place cannot just hold itself out as a church without anything more. The Appellant relied on Rhode Island tax cases and Internal Revenue

[6] The Department has consistently found pursuant to *Newport Motor Inn, Inc. v. McManus*, 171 A.2d 440 (R.I. 1961) and *Rice*, the proper measurement under R.I. Gen. Laws § 3-7-19(a) is from the building where the liquor license is to be located to the church or school premises. See *Aldo's Place, Inc. v. Town of New Shoreham*, DBR No.: 06-L-0260 (8/22/07); and *Falcone v. Town of Charlestown*, LCA-CH-99-28 (5/16/00).

Service guidelines to argue that it needs to be shown that the place of worship is operated exclusively for religious purposes and not just that it characterizes itself as a church.

The City argued that there is no requirement to inquire into what type of place of worship is within a 200 feet radius. Rather the City argued that if there is a public record showing that there is a church within 200 feet of an applicant, the City does not have the jurisdiction to issue a liquor license. The City argued that while apparently no one has spoken to the church, there is an active church registered at that location with a sign on the door stating when worship services are held.

The Intervenor argued that this is a functioning church and there is a sign on the church indicating worship services every Sunday at 10:00 a.m. which meets the definition of place of worship as defined by the Fire Code in R.I. Gen. Laws § 23-28.1-5. The Intervenor argued that the Appellant was relying on tax exemption cases which have a fraud concern so require a narrower definition of place of worship.

D. Whether the Board was Correct in Refusing to Issue the License

As set forth above, the words of a statute are to be given their plain and ordinary meaning. In *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980), the Court relied on a dictionary definition in applying the "ordinary meaning" of "must." *Id.*, at 674. As the Court has found, "[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary." *Defenders of Animals, Inc.*, at 543.

Place of worship is defined as "any building where congregations gather for prayer"[7] and "a building where people gather to worship together, such as a church,

[7] https://www.thefreedictionary.com/place+of+worship.

synagogue, or mosque."[8] At hearing, there was no evidence regarding Christ Miracle Church's membership or congregation except that it offers weekly services according to the building's sign and according to its annual report, it offers religious services, bible studies, and prayer. The building has a sign stating when services are held and a telephone number, and it has been located at the same address for over ten (10) years. While the parties did not dispute that a church would be a place of public worship, the parties disputed whether for the purposes of this statute, this church can be considered a place of public worship.

The Appellant relied on the *Church of Pan, Inc. v. Norberg*, 507 A.2d 1359, 1361-1363 (R.I. 1986) in arguing that the Christ Miracle Church should not be found to be a place of worship. It found as follows:

> Therefore, when, as in the instant matter, a taxpayer seeks tax-exempt status pursuant to [R.I. Gen. Laws] § 44-18-30(E) as a church or other religious organization, it must prove that it is operated exclusively for religious purposes. The mere fact that the claimant characterizes itself as such is not determinative. The court is permitted to inquire into the true purposes for which the organization was established and is conducted. [citations omitted] Such an inquiry should include an examination of the actual activities of the organization and should not be limited to an examination of the organization's statement of purpose. [citations omitted].
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> The phrase "religious purposes" is not defined in § 44-18-30(E). Further, we have not previously had occasion to consider the meaning of the phrase as employed therein. However, "religion," as utilized in other contexts, has traditionally been defined as one's views of one's relationship with, and obligations to, a supreme being. *** Organizations operated exclusively for religious purposes must be distinguished from those organizations dedicated primarily to the furtherance of philosophical, scientific, sociological, ecological, charitable, or political principles. [citations omitted].
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> In *Ideal Life Church of Lake Elmo v. County of Washington,* 304 N.W.2d 308 (Minn. 1981), the court addressed the issue of whether an organization seeking a property-tax exemption was a "church," as the term was employed in state constitutional and statutory-exemption provisions. Consistent with the lower court's decision, the Minnesota Supreme Court utilized what it

[8] https://www.collinsdictionary.com/dictionary/english/place-of-worship.

described as a "multiple-factual-analysis test." The court stated that the proper test for determining whether an organization qualifies as a "church," and therefore as a tax-exempt entity, requires an analysis of all of the facts and circumstances of each particular case. *Id.* at 315. The facts deemed relevant by the court in disposition of the matter before it were as follows: (1) the organization's primary motive in organization and operation was tax avoidance; (2) the group's doctrine and beliefs were intentionally vague and nonbinding upon its members; (3) members freely continued to practice other religions; (4) the group had no formally trained or ordained ministry; (5) the organization had no sacraments, rituals, education courses, or literature of its own; (6) the "church" conducted no liturgy other than simple meetings which resembled mere social gatherings or discussion groups rather than religious worship; (7) the organization was not an institution which advanced "religion," as that term is commonly understood, as a way of life for all men; and (8) members were not required to believe in any supreme being or beings. ***

We find that an application of the multiple-factual-analysis test is appropriate in the instant case. ***

[Church of Pan] members are free to continue to practice other religions. The congregation has neither any formally trained or ordained ministry nor any sacraments, rituals, or formal education courses. Monthly services consist simply of a general discussion rather than religious worship. During the services no hymns are sung, no prayers are recited, and there are no scripture readings.

The organization's tenets and activities, although admirable, are primarily secular rather than religious. The plaintiff's activities, which include forestry, wildlife care, recycling programs and monetary support of environmental organizations, are best described as environmental and conservational programs. Such activities do not advance religion, as that term is commonly understood. The organization's purpose is primarily the preservation of the environment, any religious connotation or purpose is merely incidental to this secular purpose. [citation omitted] The Church of Pan, not operated exclusively for religious purposes, therefore is not entitled to tax-exempt status pursuant to § 44-18-30(E).

The Appellant also relied on the IRS tax guidelines relating to tax exemptions for religious organizations that include the organization must be organized and operated exclusively for religious purposes and the net earnings may not inure to benefit of any private individual. See Appellant's Exhibit One (1) (print-out from the IRS website). The Appellant argued that the Christ Miracle Church did not meet IRS and the *Church of Pan* factors for being a place of worship.

R.I. Gen. Laws § 23-28.1-5(7) provides as follows:

> "Place of worship" means a building or structure, or an area thereof, the occupancy of which is for the religious rites and services and communal functions of a congregation, and which shall include sanctuaries, gathering halls, meeting rooms and offices and related facilities of the congregation, which may be located in the same, in connected, or in proximate structures.

The Intervenor argued that tax exemption cases require a different standard and pursuant to the definition in R.I. Gen. Laws § 23-28.1-5(7), there is a functioning church that offers weekly services and its purpose is to offer prayer services and bible studies and there is also an incorporated services organization at the same location that provides outreach service as a religious organization. The Intervenor argued that this is a functioning church and it does not have to prove it is a church because a church cannot come forward to consent to the granting of the License.

Church of Pan determined whether a church was tax exempt on the basis of whether it "operated exclusively for religious purposes." *Id.* at 1361. A review of the current version of this exemption shows that it requires that a religious organization to be tax exempt must be operated exclusively for religious purposes.[9] While the Appellant argued that the Christ Miracle Church would not meet the *Church of Pan* test to obtain a tax exemption, there was no evidence at hearing regarding the church's doctrines, beliefs, training of the minister, the church's sacraments, rituals, education, or liturgy. However, the determination of an organization being "operated exclusively for religious purposes" is a

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[9] In terms of sales and use tax exemption, R.I. Gen. § 44-18-30(E) is now codified as R.I. Gen. Laws § 44-18-30(5) which provides in part as follows:

> (5)(i) *Charitable, educational, and religious organizations.* From the sale to, as in defined in this section, and from the storage, use, and other consumption in this state, or any other state of the United States of America, of tangible personal property by hospitals not operated for a profit; "educational institutions" as defined in subdivision (18) not operated for a profit; churches, orphanages, and other institutions or organizations operated exclusively for religious or charitable purposes. ***

different focus from determining whether a building is a "place of public worship" for the purposes of the liquor statute.

There are no Department decisions or Rhode Island Court cases on the meaning of place of public worship within the liquor statute. However, there are cases from other states on this issue that are discussed in *"Church" or the like, within statute prohibiting liquor sales within specified distance thereof*, 59 A.L.R.2d 1439. The ALR summary of cases found that there was great liberality in favor of the status of a questioned building or institution. Various state courts have found that such factors as size of building, number of parishioners, whether incorporated, whether any formal church organization, or the strength or weakness of a church organization are immaterial to the issue of whether a place is place of public worship. The cases have found that a place used principally for religious worship and bible study is a church even if there is some incidental use of the building by other organizations allied or closely aligned with the values of the religious organization. However, buildings used for occasional preaching or land that is just owned by a religious organization would not prohibit a liquor license within the radius.

More specifically, *Fayez Restaurant, Inc. v. State Liquor Authority*, 489 N.E.2d 1277 (N.Y. 1985) found that the "Neighborhood Church" was for the purposes of the New York liquor statute "occupied exclusively" as a church even though there was an incidental use that was not inconsistent from the predominant character of the building as a church (building included pastor's residence and congregation outreach). A New York appellate court allowed a liquor license after it found that a church building's usage was not merely incidental since the church rented out space for baseball card shows, rug sales and had rented out part of the building as an embassy for five (5) years. *Brasero Restaurant, Inc.*

v. New York State Liquor Authority, 574 N.Y.S.2d (N.Y. 1st App. 1991). In *Arkansas Alcoholic Beverage Control Div. v Person*, 832 S.W. 249 (Ark. 1992), the Court found a liquor license could not issue when the church's minister's affidavit showed that the church had 40 members, 13 active members, and services every Sunday morning.

Gates v. Chadwick, 812 F.Supp. 1233 (D. Ga. 1993) found that a liquor license could issue because the plaintiff established that the church had not functioned for a long period of time in that there was no electric power connected to the building and the Court inspected the property and found it run down and there was no indication that it functioned as a church in any capacity.

A New York trial court found a liquor license could issue when the building in question served as the pastor's residence (so was tax exempt) and there was a sign outside saying God's Lighthouse and the building was open for prayer, but the first floor was only open for general prayer and there were no congregants and the certificate of occupancy said the building was for private prayer. The trial court found that a definition of "church" is a building to be used for the holding of religious services and while the building at issue might fall under state religious corporations law, it was not a church within the meaning of the state liquor licensing law. *Jane Street Seafood Café Corp. v. New York State Liquor Authority*, 426 N.Y.S.2d 200 (1980).

In the *City of Omaha v. Kum & Go*, 642 N.W.2d 154 (Neb. 2002), the Court found that the plain meaning of church included a building which is used predominately to honor a religion. As a result, the Court rejected the liquor licensing's commission regulation requiring that the place of worship must be owned by the religious organization which was required by said regulation and state tax exemption laws. The Court noted that a parsonage

which is owned by a religious organization and provided to a member of a clergy and used exclusively for religious purposes and exempt from taxation would fall under said regulation's definition of a church but a parsonage is not a church under the plain meaning of the word. The Court found that a storefront church that was not listed in the city telephone directory, had no occupancy permits for religious assembly, had no record listing it as tax exempt, about a dozen people were seen going into the building on Sunday mornings, and the building had a sign that listed a schedule of services constituted a church for the purposes of the statute barring liquor licenses 150 feet from a church.

There is no reason to rely on tax exempt cases as to what is a place of public worship in the context of liquor licensing. The General Assembly determined that as a matter of public good certain liquor licensees cannot be too close to places of public worship. A place of worship is a place where people congregate for prayer or religious services. If it is shown that a location is not being used predominately for worship, the courts have found in the context of liquor licensing that a building is not a place of public worship. The courts have found that a building is a place of public worship when a pastor also lives there since that is incidental to worship.

At hearing, the parties argued about who would have the burden to prove that a church was not a place of public worship in the context of the statute. If a place of public worship within a 200 foot radius of a liquor license applicant's location was one of many locations for a well known religious denomination within the country, there would be no question based on the building and signage regarding services that the church or synagogue or mosque was a place of public worship. While the church at issue is not a well-known religious denomination within the country, the Board reviewed the public record that

showed that there was a church at that location with weekly services. Based on the evidence before it, the Board determined that there was a place of public worship within the 200 foot radius of the Appellant's location.

In this matter, the evidence at hearing is that for over ten (10) years, a church, a place of public worship, has been located at this location. At the same location is a community outreach organization for the church (as noted in annual report). The building has signage for weekly services and directions where to park. This is not a matter where the liquor licensee pre-dated a place of worship.[10]

A place of public worship is place where people regularly congregate to worship. It may also have incidental usage related to its religious purpose. Unless it was shown otherwise,[11] the Board rightfully relied on the public record that showed there was a church at that location that conducted weekly public services and had been in that location prior to the Appellant's application.

In 2000, the Department in *Angelo J. Falcone* revoked a liquor license on appeal which the Department determined the local licensing authority had erroneously issued in 1994 as that local licensing authority had been without jurisdiction to do so pursuant to R.I. Gen. Laws § 3-7-19(a). Similarly, the Board granted this License in March, 2018, but in January, 2019, it declined to issue the License because it had no jurisdiction to issue the License because of the place of public worship within the 200 foot radius from the Appellant.

Based on the foregoing, the City was without jurisdiction to grant the License so that its Decision to refuse to issue a Class BV license to the Appellant is upheld.

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[10] See R.I. Gen. Laws § 3-7-19(c).
[11] E.g. The *Gates* case where it was shown that the church no longer functioned as a church.

VI. FINDINGS OF FACT

1. On January 10, 2019, the Board refused to issue a Class BV liquor license to the Appellant.

2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed the decision by the Board to the Director of the Department.

3. A *de novo* hearing was held on February 4, 2019 before the undersigned sitting as a designee of the Director. The parties were represented by counsel and rested on the record.

4. A church, Christ Miracle Church, is located within 200 feet of the Appellant's proposed location.

5. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. 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.*

2. The Board is without jurisdiction to grant or issue the License.

3. In this *de novo* hearing, no showing was made by the Appellant that would warrant overturning the Board's decision not to issue the Appellant a Class BV liquor license.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the Board's decision not to issue the Class BV liquor license be upheld.

Dated: March 1, 2019

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

_____ ADOPT
_____ REJECT
_____ MODIFY

Dated: 3/6/19

Elizabeth Tanner, Esquire
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 6th day of March, 2019 that a copy of the within Decision was sent by electronic delivery and first class mail, postage prepaid to Mario Martone, Esquire, Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903, Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904, and Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, R.I. and by electronic delivery to Pamela Toro, Esquire, Associate Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920.