

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

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

DECISION AFTER REMAND

I. INTRODUCTION

This matter initially 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”) on the Appellant’s Class BVX license (a/k/a “2:00 a.m. license”) (“License”) with the Board eventually revoking the License on June 7, 2017. A hearing was held on July 24, 2017 before the undersigned. The parties were represented by counsel and rested on record. A decision was issued on October 18, 2017. On October 20, 2017, the Appellant filed a motion for reconsideration. On November 27, 2017, the matter was remanded to the Board for further consideration. On January 16, 2018, the Appellant indicated that based on the Board’s determination after the November, 2017 remand, it was continuing its appeal to the Department. Therefore, this decision is issued; however, it incorporates by reference the October 18, 2017 decision and November 27, 2017 decision on the motion for reconsideration.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-2, R.I. Gen. Laws § 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.*

III. ISSUE

Whether the Board issued a short-term finite Class BVX license to the Appellant.

IV. MATERIAL FACTS AND TESTIMONY

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 a 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, 2017.¹

After the June, 2017 remand, 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. On or about June 22, 2017, the Appellant requested a stay of the Class BVX 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

¹ 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.

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.

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.² Thus, at hearing it was undisputed that the Board said the Class BVX license would expire/terminate on July 13, 2017.

A decision was issued on October 18, 2017 after which the Appellant filed its motion for reconsideration. The Appellant's motion for reconsideration included the April 19, 2017 transcript of the Board hearing which was not part of the certified record filed with the Department prior to the October, 2017 decision. 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 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.

² 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.

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.

When remanding this matter back to Board on November 27, 2017, the Department found that it was unclear whether the Board had the April 19, 2017 transcript before it at the June 21, 2017 hearing so that the Department remanded this matter so that the Board could consider the actual transcript. Therefore, the remand included the question of whether in light of the Board's April 19, 2017 transcript, did the Board still agree it issued a finite 90 day Class BVX license to the Appellant that terminated on July 13, 2017. On January 11 and 12, 2018, the Appellant and the Board notified the Department that the Board had again found it issued the Appellant a 2:00 a.m. license that expired after 90 days without review.³

V. DISCUSSION

A. The Appeal before the Department

The Department has broad and comprehensive control over the traffic in alcohol. Indeed, the Department's power of review is so broad that it has been referred to as a "state superlicensing board." *Baginski v. Alcoholic Beverage Comm'n.*, 4 A.2d 265, 267 (R.I. 1939). Thus, the Director has the authority under R.I. Gen. Laws 3-7-21, "to make any decision or order he or she considers proper." The hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. See *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964); and *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964).

B. Discussion

The Board has twice addressed the type of License it issued to the Appellant. In July, 2017, the parties agreed the Board issued a finite 90 day license after this matter was remanded on that

³ The parties represented that the Board did not issue a written decision.

issue. After that agreement, the Appellant argued in its motion for reconsideration that the April, 2017 transcript showed otherwise. On the November, 2017 remand, the Board again found that it issued a finite 90 day license. While the April, 2017 transcript arguably sounds like a license with a 90 day review, it also could be a finite 90 license that will be reviewed after 90 days to determine whether to issue another license.⁴ Indeed, the October, 2017 decision provided guidance on how local licensing authorities should issue such conditional licenses to ensure that such decisions by local authorities are clearly delineated and not susceptible to multiple interpretations. In July, 2017 the parties agreed after the June, 2017 remand that the License was finite. After the November, 2017 remand, the Board again found that the License was issued for a finite time period.

Based on the foregoing, there is no reason to reconsider the October 18, 2017 decision on this matter. The Board issued a finite License. The issues surrounding the finite License and that type of License issuance have already been addressed in the October, 2017 decision.

C. Conclusion

The Board may in the context of putting conditions on licenses be able to issue a short-term late night license as discussed in the October, 2017 decision. While in this matter the Board's 90 license might not have been set out as a license with such specific conditions needed in order for the Appellant to establish a track record to determine whether a full-term license should be issued, such a failure did not convert the 90 day license into a full-term late night license.

The Appellant accepted the 90 day license and only argued against it once it was revoked. At the time of the grant of the 90 day license, the Appellant had an opportunity to appeal the denial of the full-term license for which it applied. The denial of the full-term license was in April, 2017. R.I. Gen. Laws § 3-7-21 allows ten (10) days for an applicant to appeal a municipal licensing authority

⁴ See footnote Two (2).

decision to the Department. Therefore, the Appellant is unable to appeal to the Department the denial of its application for a full-term Class BVX license.⁵

VI. FINDINGS OF FACT

1. On or about May 14, 2017, the Board issued its final decision in relation to allegations of disorderly conduct on May 7, 2017 at the Appellant's premises.

2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed this decision and requested a stay.

3. The Department issued orders on stay requests on May 23, and June 12 and 23, 2017 in relation to the discipline imposed by the Board on the Appellant.

4. A hearing on this matter was held on July 24, 2017. The parties rested on the record with the record closing by August 18, 2017.

5. A decision was issued on October 18, 2017. The motion for reconsideration was filed on October 20, 2017.

6. A decision remanding this matter to the Board was issued on November 27, 2017. After that remand, the Board again found that the License issued was for a finite 90 day period.

7. The Appellant chose to continue its appeal to the Department.

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

VII. CONCLUSIONS OF LAW


The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-2, R.I. Gen. Laws § 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.*

⁵ Of course, the Appellant could choose to file a new application for a Class BVX license with the Board if it desires.

VIII. RECOMMENDATION

Based on the foregoing, the Hearing Officer recommends the following finding: There is no basis to reconsider the October 18, 2017 decision.

Dated: 2/20/18

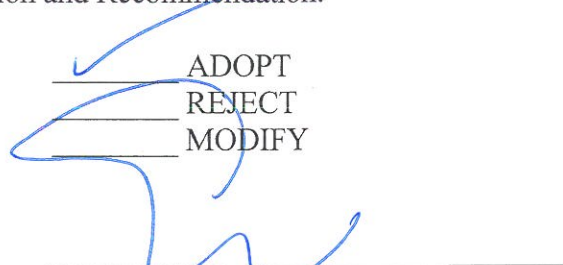

Catherine R. Warren
Hearing Officer

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: 2/22/18


Elizabeth Tanner
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 22 day of February, 2018 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, R.I. 02903, Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904, and by electronic delivery to Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building ~~69~~-1, Cranston, R.I. 02920

