

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

The Vault Lounge, LLC	:	
Appellant,	:	
	:	
v.	:	DBR No.: 17LQ014
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	

ORDER RE: MOTION TO STAY/RECONSIDER DECISION

I. Introduction

On or about December 19, 2017, the Providence Board of Licenses (“Board”) denied The Vault Lounge, LLC’s (“Appellant”) renewal application for its Class BVX liquor license (“License”). Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed the Board’s decision to the Director of the Department of Business Regulation (“Department”). By order dated December 28, 2017, the Department conditionally stayed the denial of the renewal. A full hearing was held on February 6, 2018. A decision was issued on April 18, 2018 remanding this matter back to the Board for a further decision and reducing the Appellant’s hours of operation to a closing time of 8:00 p.m. pending the remand. On April 23, 2018, the Appellant filed a motion for a stay and/or reconsideration of hearing officer’s decision. The grounds for said motion were that the remand hearing initially was scheduled by the Board for Monday, April 23, 2018 but then was taken off the calendar and scheduled for later in the week on Thursday, April 26, 2018. By order dated April 24, 2018, the Department denied said motion as the remand hearing was scheduled for later in the same week on April 26, 2018 at which time the Board was scheduled to hear this matter. On April 27, 2018, the Appellant

renewed its motion for stay/reconsideration because the Board did not hear the matter on April 26, 2018 at it had decided to appeal the Department's April 18, 2018 decision. It was undisputed by the parties that on April 26, 2018, the Board did not hear any testimony or evidence and did not hold a hearing.¹ A hearing on the stay was held on April 30, 2018 with the parties represented by counsel. The undersigned is treating this motion dated April 27, 2018 ("Motion") as a motion for reconsideration as allowed by Section 12.9 of 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearings* ("DBR2").

II. Jurisdiction

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and DBR2.

III. Issue

Whether the Motion should be granted.

IV. The Appeal before the Department

After the end of prohibition of liquor within the United States, Rhode Island implemented a new system of statewide control of liquor coupled with local authority to grant certain licenses. See P.L. 1933 ch. 2013. The intent of the new system was to eliminate the old unsupervised system of local regulation that resulted in a lack of uniformity and grave abuses that seriously affected the public welfare and instead vested broad powers of control and supervision in a state system. *Baginski v. Alcoholic Beverage Commission*, 4 A.2d 265 (R.I. 1939).²

¹ See the Board minutes for April 26, 2018.
<https://providenceri.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=8258&Inline=True>

² *Baginski*, at 266-267, found as follows:

In keeping with the Department's statewide oversight and mandate to "establish a uniformity of administration of the law for purpose of promoting temperance throughout the state," the Department has broad statutory authority to review liquor appeals. *Baginski*, at 268. See also *Tedford et al. v. Reynolds*, 141 A.2d 264 (R.I. 1958). *Baginski* held that since the Department³ is a "superlicensing board," it has the discretion to hear cases "de novo either in whole or in part." *Baginski*, at 268. Thus, an appeal may hear new testimony in part and/or may rely on the hearing before the local licensing authority. However, as the review is *de novo* the parties start afresh during the appeal but the Department has the discretion to review the local authority partially *de novo* and partially appellate as seen fit. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964).⁴ Since the Department is charged with

Chapter 2013 is a familiar and well-recognized example of the legitimate exercise of the police power. *Tisdall v. Board of Aldermen*, 57 R.I. 96, 188 A. 648. The act is entitled an act to promote temperance and to control the manufacture, transportation, possession and sale of alcoholic beverages. Its chief purpose may, without question, be said to be the safeguarding of the public health, safety and morals. *Clark v. Alcoholic Beverage Commission*, 54 R.I. 126, 170 A. 79.

The traffic in intoxicating liquors has ever been a prolific source of evils, gravely injurious to the public welfare. The need of its regulation and control is undisputed. In a search for a system of effective, impartial and uniform regulation and control of this traffic our legislature enacted the above chapter [P.L. 1933 ch. 2013] which was later amended by P.L. 1934, chap. 2088. This system is a departure from that which had long existed here prior to the advent of national prohibition. Then the regulation and control of substantially every phase of the liquor traffic was vested exclusively in the local governing bodies. The state exercised over this local administration no administrative supervision or control, except occasionally in some cities and towns the legislature intervened to set up state-appointed license commissions or police commissions with licensing powers; but such commissions were vested with purely local administrative powers only. They were not commissions with state-wide jurisdiction.

Chapter 2013 changed all this. Where, before, the emphasis was exclusively on control locally, now it is predominantly on state control. This is evident in many sections of the act. Running through the entire act is the central idea that the traffic in intoxicating liquors is a problem that is state-wide; and correspondingly, that state supervision and control, either originally in some phases or ultimately in others, alone can adequately cope with it. However, along with the incorporation into the law of this new idea, there has been retained a remnant of local administration. An example of this is the right of local boards to grant and to revoke, at least in the first instance, class C licenses. Such licenses correspond to the retail licenses, popularly known as saloon licenses under the old law.

³ At that time the alcoholic beverage commission.

⁴ See also *Jake and Ella's v. the Department of Business Regulation*, 2002 WL 977812 (R.I.Super. 2002).

ensuring statewide uniformity, it follows that the statutory scheme grants the Department the authority to revise or alter decisions of local boards. *Id.* Further, since the liquor appeal hearing is a *de novo* hearing rather than an appellate review of what occurred at the municipal level, any alleged error of law or fact committed by the municipal agency is of no consequence. *Id.* See also *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964) (Department's jurisdiction is *de novo* and the Department independently exercises the licensing function).

In this matter, pursuant to its statutory authority, the Department remanded the matter back to the Board for further consideration regarding the issue of the "back parking lot." The Board plans to appeal (as of the hearing date, no appeal had been filed) the Department's remand decision.

V. Standard of Review

Section 12.9(A) of DBR2 states as follows:

At any time after the issuance of a final order of the Director, any Party may, for good cause shown, by motion petition the Director to reconsider the final order. The petitioner shall file his/her motion within twenty (20) days of the issuance of the final order and shall set forth the grounds upon which he/she relies. The Director may grant the motion for reconsideration within his/her discretion and shall order such relief as he/she deems appropriate under the circumstances.

In *In Re Denisevich*, 643 A.2d 1194 (R.I. 1994), the Court found that a quasi-judicial body with authority similar to those exercised by state agencies had the inherent power and was obligated to reconvene to consider testimony only recently made available. See also *Perrotti v. Solomon*, 657 A.2d 1045 (R.I. 1995). In both of those cases, new evidence came to light that had the possibility of changing the outcome of the initial decisions by the administrative bodies so it was proper to re-open the cases.

In addition to case law, the Department has previously addressed the standard to be met in a Motion for Reconsideration with the Department as follows:

The public policy rationale behind this procedure is not to provide the Respondent a new hearing, but to address specific errors in the consideration of factual or legal issues that the Respondent may raise. Factual grounds raised by Respondent may not be general conclusory statements but must be specifically detailed and cite to the relevant portions of the administrative record. Likewise, legal grounds may not be general conclusory statements but must cite to specific legal cases or legal principles that upon which the Respondent relies. It is also appropriate in many cases for the Respondent to include a memorandum of law. *In the Matter of Louis Annarummo*, DBR No. 99-L-0069 (8/5/02).

VI. Discussion

The April 24, 2018 order of denial was premised on the fact the Board was scheduled to hear this matter after the remand. However, the Board did not hear the matter and plans to appeal the Department's remand decision. The undersigned requested that the parties file written arguments, but none did. The parties agreed that the Board has a right to file an interlocutory appeal to Superior Court and agreed that the Appellant has the right to appeal to the Department regarding its hours of operation.

The Board indicated that it believed it was in the Department's purview to reconsider the Appellant's hours of operation since its denial of the same motion last week was premised on the belief that the Board would hear this matter, but it did not. The Board indicated that there are no other public safety concerns other than those that have been heard already by the Department. The Board objected on the record to a change to the hours of operation.

The Appellant argued that it had no knowledge of any local complaints until the Board's denial of renewal application hearing in December, 2017. The Appellant represented that it has been addressing the back parking lot issues (e.g. the video submitted at the February, 2018 hearing) and had been ready to address them before the Board last week. The Appellant represented that it brought the owner and the head of security to the Board hearing to testify last week. The Board agreed that the owner had appeared ready to testify.

The Appellant represented that the owner and head of security would have testified to the steps it has taken since the stay order. The Appellant represented that they would have testified that all cars going into back parking lot are asked if the occupants are going to the Appellant and if so, are told not to park there and patrons going into the Appellant are asked where they parked and told not to park in back lot. In addition, the Appellant represented that the Appellant now assigns a security staff member to the lot during the day and after closing. The Appellant represented that a security staff member is at the back parking lot at closing and tells those cars coming from the Appellant not to park there after closing.⁵


Since the stay order issued on December 28, 201~~8~~⁷, the evidence is that there have been no other public safety issues regarding the back parking lot. The Appellant was unable to present the evidence of its steps taken to the Board because the Board did not hold a hearing. The Board indicated that there have been no parking lot complaints since the stay hearing.

VII. Conclusion

In light of the new information that the Board failed to hold the hearing as remanded and the Appellant's representations of steps taken to prevent the back parking lot nuisance and that there have been no other parking lot complaints since the stay order, the conditions of the stay set forth on December 28, 2017 shall be reinstated pending the Board's Superior Court appeal.

As recommended by:

Date: 5/1/18

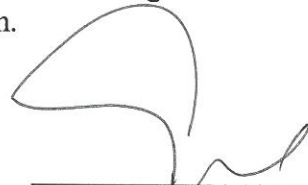


Catherine R. Warren
Hearing Officer

⁵ The Appellant indicated that its owner tried to speak to the back parking lot owner, but the back parking lot owner would not speak to him.

I have read the Hearing Officer's recommendation and I hereby ADOPT/REJECT/MODIFY the recommendation of the Hearing Officer in the above-entitled Order Denying Motion to Stay/Reconsider Decision.

Date: 5/3/18



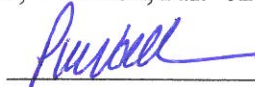
Elizabeth Tanner, Esquire
Director

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 4 day of May, 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, and Stephen Ryan, Esquire City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903 Mmartone@providenceri.com and sryan@providenceri.com, Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904, peter330350@gmail.com, and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, R.I. 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, R.I. 02920.



DIRECTOR'S ORDER

The Director rejects the Hearing Officer's recommendation, deletes Section VII and incorporates the following into the Order Regarding Motion to Stay/Reconsider Decision:

Pursuant to Section 2.19(A) of 230-RICR-10-00-2, the *Department of Business Regulation Rules of Procedure for Administrative Hearings*, a party may, for good cause shown, petition the Director to reconsider a final order and the Director may grant such motion in his/her discretion. As stated in *Annarummo*, the policy behind the motion for reconsideration procedure is not to provide a new hearing but to address specific errors in the consideration of factual or legal issues. Factual or legal grounds raised may not be general conclusory statements.

On April 18, 2018, the Department remanded this matter to the Board for further decision. The Appellant filed a motion for stay and/or reconsideration, which the Department denied on April 24, 2018. The Board scheduled the matter for appearance on April 26, 2018, but the matter was not heard. The Board's counsel informed the Appellant's counsel that the Board intends to appeal the Department's remand decision.

In support of its present motion, the Appellant's counsel states that he is not confident that the Board will hear and rule on the matter in a timely fashion. The Board's decision not to hear the matter on April 26, 2018, and its stated intention to appeal the remand decision is not good cause for the Department to reconsider its decision. Accordingly, the Appellant's motion for stay and/or reconsideration is denied.