

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

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**Ciello, LLC d/b/a Club Luv,  
Appellant,**

**v.**

**City of Providence, Board of Licenses,  
Appellee.**

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**DBR No.: 17LQ008**

**SECOND ORDER ON MOTION FOR STAY**

**I. INTRODUCTION**

This matter arose from an appeal and motion for stay filed by Ciello, LLC d/b/a Club Luv (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding a decision taken by the City of Providence, Board of Licenses (“Board”) on May 24, 2017 to revoke the Appellant’s Class BVX license (“License”). A hearing on the motion for stay was held on May 26, 2017 before the undersigned pursuant to a delegation of authority by the Director of the Department. The parties were represented by counsel. On May 30, 2017, the Department entered a partial stay. Hearings were held on the appeal on June 23, July 3, and July 7, 2017. At the close of the hearing, the Appellant’s requested that a stay be granted of the revocation of the Class BVX, the 2:00 a.m. late license, which had not been previously stayed. The City objected to any grant of a stay. The May 30, 2017 order is incorporated by reference to this order.

## 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.

**V. DISCUSSION**

As a result of the May 30, 2017 order, the Appellant has a new security plan (submitted to the Board) and new security arrangements. The undersigned has now heard the evidence; though, the parties will be submitting written arguments prior to any final decision being issued.

**VI. CONCLUSION**

The Department has consistently followed progressive discipline barring an egregious act. Applying the stay criteria, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. However, it is discretionary to issue a stay in order to maintain the *status quo* pending an appeal. Granting a partial stay maintains the *status quo* pending the full decision with the police detail and new security plan addressing any public safety issues.

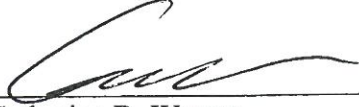
**VII. RECOMMENDATION**

Based on the forgoing, the undersigned recommends that following order be made -

The terms of the May 30, 2017 order are modified so that a stay is granted for the revocation of the Class BVX (extended) license. The rest of the May 30, 2017 order (e.g. police detail) remains in place. In addition, the Appellant shall submit to the Board any revisions/additions of its security plan if revisions/additions are needed for the 2:00 a.m. closing.

Nothing in this order precludes the undersigned to revisit this order because of a change in circumstances. E.g. the violation of any of the conditions could warrant a review of the stay order.

Dated: 7/10/17


  
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Catherine R. Warren  
Hearing Officer

**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:

ADOPT  
 REJECT  
 MODIFY

Dated: 7/10/17

  
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Scottye Lindsey  
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 10 day of July, 2017 that a copy of the within Order was sent by email 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, Nicholas Hemond, Esquire, DarrowEverett, LLP, One Turks Head Place, Providence, RI 02903, and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 02889 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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