

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

D&L ENTERPRISES, INC. d/b/a East Bay Tavern Appellant,	:	
	:	
v.	:	DBR No. 14LQ009
	:	
The City Council for the City of East Providence Appellee.	:	
	:	

RECOMMENDATION AND INTERIM ORDER GRANTING CONDITIONAL STAY

On March 5, 2012, the City Council for the City of East Providence, sitting as the Licensing Commissioner (“City”) rendered a decision revoking the Class B liquor license of D&L Enterprises d/b/a East Bay Tavern for an alleged incident occurring on February 6, 2014. On March 6, 2014, D&L (“Appellant”) filed a Notice of Appeal of the decision to the Department of Business Regulation (“Department”). The Appellant simultaneously made a petition for a stay, requesting that the Department stay the City’s decision to allow the Appellant to remain open during the pendency of the appeal. A hearing on the request for a stay was held before the undersigned on March 12, 2014 at which time counsel for the City and the Appellant presented oral argument and the Chief of Police for the City provided testimony. The undersigned also considered the written memorandum submitted by counsel for the Appellant.

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 furthers 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. Reviewing the arguments and evidence presented at the stay hearing, the undersigned concludes that interests of the licensee in avoiding closure during the pendency of its *de novo* appeal outweigh the interests of the Board and the public in immediate closure. The interest of the Appellant in a *de novo* hearing prior to imposition of the “death penalty” of revocation 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. On the other hand, while the alleged incidences occurred on February 6, 2014, the City did not render its decision until March 5, 2014. This delay, coupled with the fact that the City did not invoke its emergency powers, can be reasonably construed as evidencing that immediate closure is not necessary to protect the public interest. Furthermore, it seems that the ten days that have elapsed since the


written revocation decision was issued would have served as a “cool down” period to mitigate any risk of a retaliation event.

In concluding that a stay is appropriate in this case, the undersigned further recognizes that the public safety risk can be addressed by placing a restriction on the operation during the stay. The incident occurred during a live entertainment event which may have precipitated an environment in which the disturbance was more likely to occur. Therefore, it is reasonable to prohibit live entertainment during the stay period unless the Appellant complies with certain safety precautions such as security personnel, detail officers, and/or police surveillance. The Chief of Police is in the best position to determine what such measures are appropriate. If the Appellant complies with the Chief’s written instructions for safety and security, only then should the Appellant be permitted to provide live entertainment.

RECOMMENDATION

Based on the forgoing, the undersigned recommends granting a stay on the Class B liquor license of the Appellant so that the Appellant can remain open pending final decision in this matter on the following condition: The Appellant shall be prohibited from providing live entertainment on the premises during the stay unless the Appellant complies with written instructions from the Chief of Police for appropriate security personnel, detail officers, and/or police surveillance.

Date: 3/14/2014


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: 3/14/14

Maria Valenzuela (Bar)
Paul McGreevy
Director

Entered as an Administrative Order No.: - 14-10 this 14th day of March, 2014.

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.

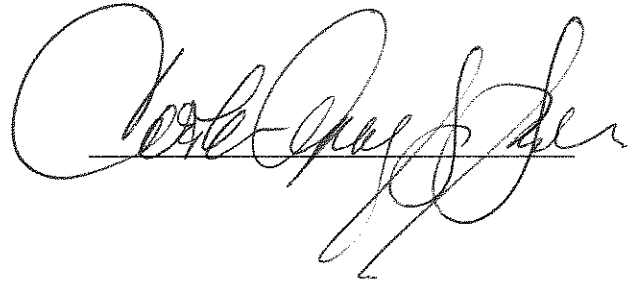
CERTIFICATION

I hereby certify on this 17th day of March, 2014 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 black ink, appearing to read "Robert E. Craven", written over a horizontal line.