

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

John J. Igliazzi, Esquire,
Appellant,

DBR No. 19LQ014

v.

City of Providence, Board of Licenses,

and Hartford Liquors, LLC d/b/a
Hartford Wine & Spirits,
Appellees.

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ORDER RE: MOTION TO DISMISS

I. INTRODUCTION

On March 18, 2019, the City of Providence (“City”), Board of Licenses (“Board”), approved the transfer of the Class A liquor license held by Fat Barrel, Inc. (“Barrel”) (located at 905 Narragansett Boulevard) to Hartford Liquors LLC (“Hartford”) (located at 680 Hartford Avenue). This matter arose from an appeal filed on March 28, 2019 pursuant to R.I. Gen. Laws § 3-7-21 by John J. Igliazzi, Esquire, (“Appellant”) regarding said transfer with the Department of Business Regulation (“Department”). A motion to dismiss on the basis of standing was filed by Hartford. A hearing on said motion was heard on May 2, 2019 before the undersigned who was delegated to hear this matter by the Director of the Department.

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.*

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. STANDING

R.I. Gen. Laws § 3-7-21 provides for appeals of local licensing decisions to the Department in part as follows:

Appeals from the local boards to director. (a) Upon the application of any petitioner for a license, or of any person authorized to protest against the granting of a license, including those persons granted standing pursuant to § 3-5-19, or upon the application of any licensee whose license has been revoked or suspended by any local board or authority, the director has the right to review the decision of any local board, and after hearing, to confirm or reverse the decision of the local board in whole or in part, and to make any decision or order he or she considers proper, but the application shall be made within ten (10) days after the making of the decision or order sought to be reviewed. Notice of the decision or order shall be given by the local or licensing board to the applicant within twenty-four (24) hours after the making of its decision or order and the decision or order shall not be suspended except by the order of the director.

R.I. Gen. Laws § 3-5-17 provides as follows:

Notice and hearing on licenses. Before granting a license to any person under the provisions of this chapter and title, the board, body or official to whom application for the license is made, shall give notice by advertisement published once a week for at least two (2) weeks in some newspaper published in the city or town where the applicant proposes to carry on business, or, if there is no newspaper published in a city or town, then in some newspaper having a general circulation in the city or town. Applications for retailer's Class F, P and Class G licenses need not be advertised. The advertisement shall contain the name of the applicant and a description by street and number or other plain designation of the particular location for which the license is requested. Notice of the application shall also be given, by mail, to all owners of property within two hundred feet (200') of the place of business seeking the application. The notice shall be given by the board, body or official to whom the application is made, and the cost of the application shall be borne by the applicant. The notices shall state that remonstrants are entitled to be heard before the granting of the license, and shall name the time and place of the hearing. At the time and place a fair opportunity shall be granted the remonstrants to make their objections before acting upon the application; provided that no advertisement or notice need be given pursuant to this section when a license holder applies for a temporary seasonal expansion of an existing liquor license.

R.I. Gen. Laws § 3-5-19 provides in part as follows:

Transfer or relocation of license. (a) The board, body or official which has issued any license under this title may permit the license to be used at any other place within the limits of the town or city where the license was granted, or, in their discretion, permit the license to be transferred to another person, but in all cases of change of licensed place or of transfer of license, the issuing body shall, before permitting the change or transfer, give notice of the application for the change or transfer in the same manner as is provided in this chapter in the case of original application for the license, and a new bond shall be given upon the issuance of the license provided, that notice by mail need not be made in the case of a transfer of a license without relocation. In all cases of transfer of license, indebtedness of the licensee incurred in the operation of the licensed premises shall be paid to or released by an objecting creditor before the issuing body permits the transfer. In cases of dispute as to the amount of indebtedness, the issuing body, may, in its discretion, permit the transfer upon statement of the licensee, under oath, that the claim of indebtedness is disputed and that the statement of dispute is not interposed for the purpose of inducing transfer of the license. No creditor is allowed to object to the transfer of a license by a receiver, trustee in bankruptcy, assignee for the benefit of creditors, executor, administrator, guardian or by any public officer under judicial process. In case of the death of any licensee, the license becomes part of the personal estate of the deceased. The holders of any retail Class A license within the city or town issuing or transferring a Class A license have standing to be heard before the board, body, or official granting or transferring the license.

IV. DISCUSSION

a. Travel

After the Appellant filed his appeal, the undersigned wrote the parties to clarify on what basis the Appellant was appealing the Board decision. It was clarified that the Appellant filed the appeal as City councilor for that district. It was undisputed that the Appellant does not live within 200 feet of the Appellant's location and he was not acting as an attorney representing any party to an appeal. It was not disputed that the Appellant is the City councilor for the district in which the Appellant is located. It was agreed that the Appellant is not a Class A liquor licensee.

Based on the evidence, the Board followed the legal process for the application for the transfer of license. See Hartford's Exhibit One (1) (Appellant's radius map, abutters' list, sample of notice of hearing sent to the abutters, letter sent to Appellant's lawyer scheduling the hearing date, copy of notice of hearing advertisement in the *Providence Journal* on March 4 and 11, 2019, and Board minutes for March 18, 2019 showing transfer of said license). No party raised an issue that the legal process was not followed.

b. Arguments

Hartford argued that the Appellant does not have standing to appeal as he is not an abutter within the 200 foot radius of Hartford's location. Hartford relied on *Earle v. Pastore*, 511 A.2d 989 (R.I. 1986); *Schneider v. Reynolds*, 134 A.2d 56 (R.I. 1957); and *Moretti v. Division of Intoxicating Beverages*, 5 A.2d 288 (R.I. 1939). Hartford also argued that the Department should not exercise its *sua sponte* authority since no statewide issue was implicated in the transfer of said license. Barrel agreed with Hartford's arguments.

The Board and City argued that that by including in R.I. Gen. Laws § 3-7-21, those persons granted standing pursuant to R.I. Gen. Laws § 3-5-19, there must be other people not included in

R.I. Gen. Laws § 3-5-19 who can appeal such as City councilors. The City argued that City councilors can appeal other type of local board decisions such as by the zoning board. The Board argued that the City councilor should be given an opportunity to be heard as he could represent an abutter.¹ The Appellant argued that he represented that district and notice was given of the transfer so that it was up to the Department regarding its jurisdiction.

c. Statutory Appeal

When an original license is issued, abutters within 200 feet of the new licensee have the right to appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21. R.I. Gen. Laws § 3-5-17 provides what type of notice to 200 feet abutters is required to be given for an original application for license. Notice is also given to 200 feet abutters for a transfer or relocation of license pursuant to R.I. Gen. Laws § 3-5-19. R.I. Gen. Laws § 3-7-21 also provides that those granted standing pursuant to R.I. Gen. Laws § 3-5-19 have the right to appeal. R.I. Gen. Laws § 3-5-19 applies to the transfer or relocation of a license where the notification process is the same as an original application. Appeal rights are not granted to 200 feet abutters in renewal matters since a renewal does not involve a new license, or a new location, or a new owner.

Earle v. Pastore, 511 A.2d 989, 990 (R.I. 1986) found as follows:

§ 3-7-21 sets out the right of appeal from the local licensing board to the liquor control administrator to only three groups of individuals: (1) applicants who have been denied a license, (2) licensees who have had their licenses revoked or suspended, (3) any person hereby authorized to protest against the granting of a license.

Earle reaffirmed that persons authorized to protest are those within the 200 foot radius and not those who received notice via public notice and appeared at the hearing to object. See *Moretti v. Division of Intoxicating Beverages*, 5 A.2d 288 (R.I. 1939). *Moretti* found that the statute

¹ However, the Appellant when asked the basis for his appeal already indicated that it was as a City councilor. No further information was presented at hearing by the Appellant regarding any other basis for standing.

distinguished between those who have a right to be heard at the local hearing and those that have the right to protest and thus may appeal the local licensing authority's decision. See also *Schneider v. Reynolds*, 134 A.2d 56 (R.I. 1957).

Earle noted that the Courts have no authority to expand the appeal language and that no change had been made to the appeal statute since *Moretti* and *Schneider*. In the year following *Earle*, R.I. Gen. Laws § 3-5-19 was amended to provide that any Class A licensee may have standing to be heard on a transfer before the local licensing authority. P.L. 1987 ch. 423 § 1. R.I. Gen. Laws § 3-7-21 was amended in 1994 to provide for appeal rights for any of those persons granted standing pursuant to R.I. Gen. Laws § 3-5-19. By including the reference to R.I. Gen. Laws § 3-5-19 in R.I. Gen. Laws § 3-7-21, it is clear that abutters for the transfer and relocation of a license (which is covered in R.I. Gen. Laws § 3-5-19) have the right to appeal the same as abutters for a new license. In addition, by including the reference to R.I. Gen. Laws § 3-5-19, Class A licensees have the right to appeal the issuance or transfer of another Class A license.²

Earle found there are three (3) categories of those who can appeal: applicants, licensees, and abutters. Applicants and licensees are those authorized to appeal who are not within the 200 feet radius. In addition, Class A licensees can appeal the issuance or transfer of a Class A liquor license. Except for the addition of Class A licensees to those authorized to protest and the clarification that transfer and relocation abutters can appeal, there has been no change in the statutory right to appeal. Anyone – including City councilors – may appear at a Board hearing to

² *East Greenwich Wine & Spirits, Inc. v. Racine*, 1995 WL 841393 (R.I. Super.) found that Class A liquor licensees did not have the right to appeal pursuant to R.I. Gen. Laws R.I. Gen. Laws § 3-7-21. However, that case relied on the statutory version of R.I. Gen. Laws § 3-7-21 prior to 1994.

be heard on a transfer application. However, only those within the 200 feet radius can appeal. *Earle* rejected the argument that anyone can appeal and reaffirmed the same finding in *Moretti*.³

There is nothing in the statutory language that allows a City councilor for a district to appeal a Board's decision to the Department. The Courts have continually declined to expand appeal rights that are not provided for by statute. The legislature has provided for appeal rights for abutters for new and transfer licenses and relocation and added Class A liquor licensees. There is no statutory standing for the Appellant to file his appeal as a City councilor.

d. Sua Sponte

The Department has broad and comprehensive control over the traffic in intoxicating liquors. Indeed, the Department's power of review is so broad that it has been referred to as a "state superlicensing board." *Baginski*, at 267. *Supra*. Because of this broad authority to enforce Title 3, the Department may review matters on appeal pursuant to its authority under R.I. Gen. Laws § 3-2-2⁴ rather than R.I. Gen. Laws § 3-7-21.

The Department exercises its authority under R.I. Gen. Laws § 3-2-2 when the matter rises to a level that impacts its broad authority over statewide licensing. For example, the Superior Court in *City of Providence Bd. of Licenses v. State Department of Business Regulation*, 2006 WL

³ In *American Legion Post 24 v. Town of Hopkinton*, DBR 03-L-0178 (2/5/04), the Department rejected an argument that a patron of a licensee can appeal a local authority's sanctioning decision on a liquor licensee.

⁴ R.I. Gen. Laws § 3-2-2 provides as follows:

Supervision. – (a) The department has general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting, keeping for sale, and selling beverages.

(b) The department may lease a warehouse for the purpose of efficiently exercising its powers and duties of inspection and may upon reasonable charges store beverages for license holders in the warehouse. No lease shall be for a longer period than five (5) years and every lease shall contain the provision that if it becomes unlawful to manufacture, keep for sale, and to sell beverages in this state it shall become void.

(c) The department has the power at any time to issue, renew, revoke and cancel all manufacturers', wholesalers' and retailers' Class G licenses and permits as are provided for by this title.

(d) The department shall supervise and inspect all licensed places to enforce the provisions of this title and the conditions, rules and regulations which the department establishes and authorizes.

1073419 (R.I. Super.), upheld the Department’s authority to hear a matter on appeal pursuant to the Department’s *sua sponte* authority under R.I. Gen. Laws § 3-2-2. In that matter, the *Providence Journal* appealed to the Department and argued that the Providence Board of Licenses had not followed Rule 27 of *Liquor Control Administration*⁵ when it had granted an expansion of a liquor license to a licensee without a public hearing as required by Rule 27.⁶ The Superior Court found as follows:

Rule 27 is promulgated through the above statutory provisions and enforceable statewide. Rule 27 would be revoked by implication if the Department cannot enforce it against a local board that does not appropriately apply it. *See El Marocco Club, Inc. v. Richardson*, 746 A.2d 1228, 1231 (R.I. 2000) (concluding that where the implication of a municipality’s authorization to attach conditions to the issuance of a liquor license was not read into § 3-5-21, “the power to revoke or suspend licenses becomes a nullity since there is no basis upon which [said power] can be exercised []”) (quoting *Thompson v. East Greenwich*, 512 A.2d 837, 841 (R.I.1986) (citing *Gott v. Norberg*, 417 A.2d 1352, 1356-57 (R.I.1980))). Therefore, by precluding the application of the rule, the Journal and others similarly situated are stripped of their right to a meaningful opportunity to challenge any license expansion when the Board, on its own, deems the rule inapplicable. This was clearly not the intent of the General Assembly when it created the Department.

The Court has long recognized the Department’s statewide authority in the regulation of alcoholic beverages, deeming it a “state superlicensing board.” *Baginski*, 62 R.I. at 182, 4 A.2d at 265. Vested with such authority, the Department, on its own motion, has the power and jurisdiction to revoke such licenses that have been acquired in disregard of its rules and regulations. *See Belconis v. Brewster*, 65 R.I. 279, 284, 14 A.2d 701, 703 (1940) (the liquor control administration may, of its own motion, revoke or suspend any license dealing with the distribution of alcoholic beverages).

In *City of Providence*, there was an issue of whether the *Providence Journal* had standing to bring the appeal to the Department. The Department found that whether or not the *Providence Journal’s* appeal was timely, the Department as a “superlicensing” body had the general supervisory authority to take cases *sua sponte* to ensure compliance with Title 3. The Superior

⁵ Pursuant to the recodification of regulations required by R.I. Gen. Laws § 42-35-5, this regulation has been recodified as 230-RICR-30-10-1, *Liquor Control Administration*, effective May 22, 2018 and amended effective March 9, 2019. Rule 27 is now known as Rule 1.4.27.

⁶ Subsequent to this case, the statute was amended to preclude the requirement for a hearing on a seasonal expansion.

Court upheld this finding. Thus in that matter, the Department exercised its authority pursuant to R.I. Gen. Laws § 3-2-2 to hear the *Providence Journal's* appeal as the issue before the Department hinged on whether the Board had complied with a specific statewide rule. See also *Volare, Inc. d/b/a Barry's v. City of Warwick Board of Public Safety*, LCA-WA-95-01 (7/17/95) (finding that the Department also had jurisdiction under R.I. Gen. Laws § 3-2-2 as the Department has jurisdiction to ensure compliance with Title 3).

Like *City of Providence*, the issue in *James and Lauren D'Ambra v. Narragansett Town Council*, DBR No.: 14LQ058 (order 12/14/14; decision 4/21/15) was one of compliance by a local authority with a statewide rule. More specifically, there was a question of whether the local authority has complied with Rule 14 (now Rule 1.4.14) of the *Liquor Control Administration* regulation. Those appellants did not have standing to object to the renewal of that license based on alleged violations of town ordinances by the liquor licensee, but the Department allowed the appeal to proceed on the issue of Rule 14.


The Department also has exercised its authority under R.I. Gen. Laws § 3-2-2 to review sanctions to ensure statewide consistency of sanctions. See *Bourbon Street, Inc. d/b/a Senor Froggs/Sully's Sports Bar v. Newport Board of Licenses Commissioners*, 1999 WL 1335011 (*R.I. Super.*). See also *Green Point Liquors v. McConaghy*, 2004 WL 2075572 (*R.I. Super.*) (discussion of *sua sponte* authority on part of Department to bring actions and to review local actions).

In contrast to these cases, there are no reasons for the Department to exercise its *sua sponte* authority to hear this appeal. There is no issue of state oversight of sanctions as this is a transfer of a license. No issue has been raised that the Board ignored or overlooked or failed to follow a statewide rule regarding the licensing and/or transfer of license. No issue of statewide importance has been raised in this appeal.

V. RECOMMENDATION

Based on the foregoing, the Appellant's motion to dismiss is granted.

Dated: May 10, 2019

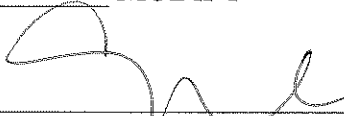

Catherine R. Warren
Hearing Officer

ORDER

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

ADOPT
 REJECT
 MODIFY

Dated: 5/14/19


Elizabeth M. 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 14th day of May, 2019, that a copy of the within Order was sent by first class mail, postage prepaid and by electronic delivery to Mario Martone, Esquire, and Stephen Ryan, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903, and John J. Garrahy, Esquire, 2088 Broad Street, Cranston, R.I. 02905 Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 02889, and Marc B. Gerstacov, Esquire, Law Office of Ronald Markoff, 144 Medway Street, Providence, R.I. 02906 and by electronic-delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

