

**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.	:	DBR No.: 17LQ007
	:	
City of Providence, Board of Licenses, Appellee.	:	
	:	

ORDER DENYING MOTION FOR STAY

I. INTRODUCTION

This matter arose from a motion for stay filed by Pasha Lounge, Inc. d/b/a Pasha Hookah Bar (“Appellant”) regarding a final order issued on or about June 7, 2017 by the City of Providence, Board of Licenses (“Board”). Initially this matter came before the Department on the Appellant’s motion for stay during the hearing in relation to the Board’s orders imposing certain restrictions on the Appellant pending the Board’s hearing. That matter came for hearing on a stay request on May 22, 2017 before the undersigned in her capacity as Hearing Officer delegated by the Director of Department. 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 security video system that must be available to the police upon request. The Appellant filed a motion to stay 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. On June 21, 2017, the Board found that the Class BVX license granted on April 19, 2017 was for 90 days and that it would condition the Appellant's Class BV license on maintaining the video system in working order and providing the police access to the video in the event of an incident at the establishment. On or about June 22, 2017, the Appellant requested a stay of this order. No further hearing was held on this request.

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. DISCUSSION

The Board's findings arose out of an issue of disorderly conduct.¹ However, the issue now before the undersigned relates to the Class BVX license and whether the Board has the authority to only issue a 90 day license. The Appellant argues that the Board cannot issue a license for a finite time, but only can issue a license for the full period and then if something happens, the license would be subject to a show cause hearing and could either be suspended or revoked. The City has argued that as the Class BVX license terminates on July 19, 2017, the *status quo* is maintained by not issuing a stay as the Appellant operated without a BVX license until this year [April, 2017] and remains open [but without the BVX] and the license will terminate on July 19, 2017. The Appellant and Board and City also disagree as to the condition of licensing requiring the video system and police access in case of an incident.

Prior to addressing the issue of the disorderly conduct, there needs to be a decision on the issue of the so-called 90 day probationary license and whether that terminates after 90 days and is subject to an "extension" or whether the Board is statutorily prohibited from issuing a probationary license. Furthermore, a decision will need to be made on the issue of video conditions.

¹ See May 23, 2017 order for an extended discussion of the disorderly conduct case law.

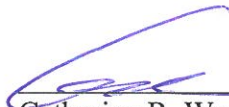
The issue regarding the disorderly conduct relates to witness credibility so it cannot be ascertained without a full review of the record who will prevail on the disorderly conduct issue. The license at issue is scheduled to terminate in less than a month. There has been no strong showing that the Appellant will prevail on the issue of the Board's authority regarding that license terminating on July 19, 2017. Taking into consideration the *status quo* and the fact that the 90 day Class BVX license is scheduled to terminate in less than a month, there is no reason to grant a stay of the revocation of the Class BVX license.

A full hearing will determine the Board's (and any licensing authority) ability to grant a probationary license and what that actually means for the license.² The parties can choose to orally argue this issue and/or submit briefs. In addition, a full hearing will be held on the issue of the police access to the video. It is the undersigned's understanding that the issue is the police access to the video, but if the Appellant is also raising the conditioning of a video security system, the Appellant may address that condition as well. The parties can choose to orally argue this issue and/or submit briefs.³

V. RECOMMENDATION

Based on the forgoing, the undersigned recommends the following: that the Appellant's motion for a stay be denied.

Dated: 6/23/17



Catherine R. Warren
Hearing Officer

² Depending on that decision, a decision then could be made on the disorderly conduct issue.
³ The parties shall notify the undersigned whether they want a hearing or to submit written briefs or both.

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:

 X ADOPT
 REJECT
 MODIFY

Dated: 6/23/17

 Scottye Lindsey
Scottye Lindsey
Director

NOTICE OF APPELLATE RIGHTS

THIS ORDER IS REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35-15(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 STAY ENFORCEMENT OF THIS ORDER.

CERTIFICATION

I hereby certify on this 26 day of June, 2017 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, RI 02903 Mmartone@providenceri.com, Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, RI 02904, peter330350@gmail.com, and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 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, RI 02920

 P. M. Valle