



## II. JURISDICTION

The Appellant has filed an appeal with the Department pursuant to R.I. Gen. Laws § 3-7-21.

## III. DISCUSSION

Before addressing the issue of the request for a stay, it is necessary to determine whether the appeal was timely filed since if it was not, the Department does not have jurisdiction to hear the appeal. R.I. Gen. Laws § 3-7-21 states 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those persons granted standing pursuant to § 3-5-19, or upon the application of any licensee whose license has been revoked or suspended by any local board or authority, the director has the right to review the decision of any local board, and after hearing, to confirm or reverse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.

The Board revoked the License on January 24, 2019.<sup>2</sup> The Board forwarded a letter dated January 25, 2019 to the Appellant that memorialized its decision of January 24, 2019. The Appellant filed its appeal with the Department on February 5, 2019.<sup>3</sup> Ten (10) days from January 24, 2019 was February 3, 2019 which was a Sunday so the ten (10) day appeal from the date of decision ended on Monday, February 4, 2019.<sup>4</sup>

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<sup>2</sup> See the Board's January 24, 2019 minutes at <https://providenceri.igm2.com/Citizens/FileOpen.aspx?Type=15&ID=8949&Inline=True>.

<sup>3</sup> The appeal filed with the Department was not time stamped; however, it was agreed that the appeal was hand delivered to the Department's offices on February 5, 2019.

<sup>4</sup> Since the appeal period ended on a Saturday or Sunday or legal holiday, the appeal period runs to the next day that is not a Saturday, Sunday, or holiday which would have been Monday, February 3, 2019. *McAninch v. Department of Labor and Training*, 64 A.3d 84 (R.I. 2013) addressed the applicability of Super. R. Civ. P 6 Time to the filing of administrative appeals with Superior Court. Rule 6(a) provides as follows:

(a) **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it

**a. Arguments**

The Appellant argued a stay should be granted because the violations did not merit a revocation of the License.

The Board and City argued that the appeal was untimely and no stay should be granted because revocation was warranted based on progressive discipline.

**b. Discussion**

The Department has previously ruled that an oral notice of a decision following a hearing is sufficient notice pursuant to R.I. Gen. Laws § 3-7-21. *Certain Property Owners and the Door v. Pawtucket Board of License Commissioners*, LCA-PA-99-12 (5/11/00) upheld by the Superior Court in *Certain Prop. Owners v. Pawtucket Bd. of License Comm'rs*, 2002 R.I. Super. LEXIS 116. In upholding that Department decision, the Court found that “the filing of an appeal application from a decision by a liquor-licensing Board to the Director is jurisdictional. Accordingly, the Director lacks jurisdiction to review de novo a Board's decision if an appeal to the Director is filed too late.” *Id.* at \*7. Furthermore, the Court found that there was no requirement within the statute that a decision of a liquor licensing board must be written to be effective or to start the running of time within which an appeal to the Director must be filed. See also *Jacques, Ltd. v. City of Providence, Board of Licenses*, DBR No.: 18LQ007 (4/16/18) and *Garry Crum d/b/a Club Litt v. City of Providence, Board of Licenses*, DBR No.: 14LQ054 (11/6/14) (both dismissing appeals filed pursuant to R.I. Gen. Laws § 3-7-21 for failing to file the appeal within the ten (10) day period).

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is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.


The Rhode Island Supreme Court found that Rule 6 applied to Superior Court review of administrative decisions as provided for in R.I. Gen. Laws § 42-35-15(b) so that if the 30 day period to file an appeal falls on a Saturday, Sunday, or legal holiday, the period to file runs until the end of the next day which is not Saturday, Sunday, or a holiday (in other words, the next business day). Similarly, the ten (10) day period to file an appeal with the Department fell on a Sunday so that the period to file ran to the Monday, February 4, 2019.

The Board made its decision (orally) on January 24, 2019 so that pursuant to the statute the appeal had to be filed by February 4, 2019. The Appeal was filed on February 5, 2019.

**V. RECOMMENDATION**

Based on the foregoing, the undersigned recommends that this appeal be dismissed as the Department lacks jurisdiction to hear this appeal since the appeal was not filed within the statutorily required ten (10) days.<sup>5</sup>

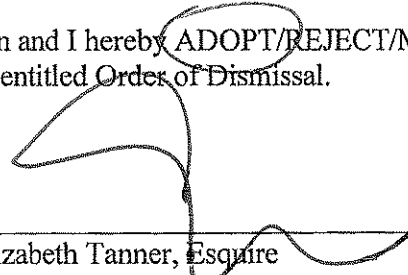
Dated: February 14, 2019

  
Catherine R. Warren  
Hearing Officer

**ORDER**

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 of Dismissal.

Dated: 2/14/19

  
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.**

<sup>5</sup> As the appeal was not timely filed, there is no need to reach the issue of who filed the appeal raised by the City and the Board.

**CERTIFICATION**

I hereby certify on this 14<sup>th</sup> day of February, 2019 that a copy of the within Order was sent by electronic delivery and first class mail, postage prepaid, to the following: John S. Ciolli, Esquire, The Law Office of John S. Ciolli, 716 Atwells Avenue, Providence, R.I. 02909 johnsciolli@gmail.com, Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, R.I. 02889 ldatty@gmail.com, and Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903 Mmartone@providenceri.com, and by hand-delivery to Pamela Toro, Associate Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, R.I. 02920.

  
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