

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

Jacques, Ltd.,	:	
Appellant,	:	
	:	
v.	:	DBR No.: 18LQ007
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	

ORDER OF DISMISSAL

I. INTRODUCTION

Jacques, Ltd. (“Appellant”) seeks a stay of the City of Providence, Board of Licenses’ (“Board”) decision to impose a \$3,750 administrative penalty on its Class B liquor license for five (5) underage violations of R.I. Gen. Laws § 3-5-21. The Board objected to the Appellant’s motion and argued that the Appellant’s appeal was not timely filed. This matter came before the undersigned on April 10, 2018 in her capacity as Hearing Officer delegated by the Director of the Department of Business Regulation (“Department”).

II. JURISDICTION

The Appellant has filed an appeal with the Department pursuant to R.I. Gen. Laws § 3-7-21 and R.I. Gen. Laws § 3-2-2.

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those persons granted standing pursuant to § 3-5-19, or upon the application of any licensee whose license has been revoked or suspended by any local board or authority, the director has the right to review the decision of any local board, and after hearing, to confirm or reverse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 imposed the administrative penalties (as well as requiring the submission of a security plan and mandatory attendance at ID training for all servers and floor hosts) on March 22, 2018.^{1 2} The Board forwarded a letter dated March 26, 2018 to the Appellant that memorialized its decision of March 22, 2018. The Appellant filed its appeal with the Department on April 3, 2018. Ten (10) days from March 22, 2018 was April 1, 2018 which was a Sunday so the ten (10) day appeal from the date of decision ended on Monday, April 2, 2018.³

¹ See the Board's March 22, 2018 minutes at <https://providenceri.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=8096&Inline=True>

² Pursuant to R.I. Gen. Laws § 3-7-21, the Department does not have authority to hear appeals of fines. However, the Superior Court found that the Department has implied jurisdiction to review administrative fines imposed by local boards pursuant to R.I. Gen. Laws § 3-5-21. See *The Rack, Inc. d/b/a Smoke v. Providence Board of Licenses*, et al. CA No. PC 2011-5909 (7/22/13). The Court found that if the monetary fine imposed on a licensee by a local liquor licensing board is within statewide limits set by statute then such a finding by the Department may be sufficient basis for the Department to dismiss a licensee's appeal. *Id.* at pp. 14-17. R.I. Gen. Laws § 3-5-21(b) provides that a first offense by a liquor licensee shall be fined \$500 with the fine for each subsequent offence not to exceed \$1,000. R.I. Gen. Laws § 3-5-21 establishes minimum fines for violations. The statute provides for a clean slate for all offenses if the licensee has not had any offenses for three (3) years. Thus, a first offense of the liquor statute cannot be fined more than \$500 with each subsequent offense of the liquor licensing law not being fined more than \$1,000 but if the licensee has no offenses for three (3) years, the clock is re-set and any violation would be considered a first offense. At the hearing before the undersigned, the Board represented that the Appellant had \$500 administrative penalty in January, 2016 so the Board imposed an administrative penalty of \$750 as allowed by statute for each of the five (5) underage violations found by the Board. The Superior Court has found that if an administrative penalty is within state statutory limits that may be sufficient to dismiss an appeal. However, before reaching the issue of the stay or the penalties, the appeal must have been timely filed.

³ 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, April 2, 2018. *McAninch v. Department of Labor and Training*, 64 A.3d 84 (RI 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. Arguments

The Appellant's attorney argued that while the Board made its decision on March 22, 2018, he was only able to consult with the Appellant's owner (who had not been at the March 22, 2018 hearing) after the issuance of the Board's letter on March 26, 2018. The Appellant argued a stay should be granted because there was an issue over whether there was underage drinking and recovering money from the City if successful on appeal would be difficult.

The Board and City argued that the appeal was untimely and that the administrative penalties were within the statutory requirements.

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

(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 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, April 2, 2018.

within which an appeal to the Director must be filed. See also *Garry Crum d/b/a Club Litt v. City of Providence, Board of Licenses*, DBR No.: 14LQ054 (11/6/14) (dismissing an appeal filed pursuant to R.I. Gen. Laws § 3-7-21 for failing to file the appeal within the ten (10) day period).

The Board made its decision (orally) on March 22, 2018 so that pursuant to the statute the appeal had to be filed by April 2, 2018. The Appeal was filed on April 3, 2018.

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.

Dated: April 11, 2018


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: 4/13/18


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.

CERTIFICATION

I hereby certify on this 16 day of April, 2018 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, R.I. 02904, peter330350@gmail.com, and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, R.I. 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, R.I. 02920.


