

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

<b>Ciara Restaurant &amp; Lounge, Appellant,</b>	:	
	:	
v.	:	<b>DBR No.: 17LQ005</b>
	:	
<b>Johnston Town Council sitting as a Liquor Board of Licenses, Appellee.</b>	:	
	:	

**RECOMMENDATION AND ORDER REMANDING MATTER**

**I. INTRODUCTION**

This matter arose from a motion for stay filed by Ciara Restaurant & Lounge (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-2-2 regarding the decision taken by the Johnston Town Council sitting as Liquor Board of Licenses (“Board”) to impose a two (2) officer detail for three (3) months (with the Board to review in July, 2017). A hearing on the motion to stay was heard on March 24, 2017 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 § 3-2-2 *et seq.*,<sup>1</sup> 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

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<sup>1</sup> The Department has authority to appeals pursuant to R.I. Gen. Laws § 3-2-2 which relates to its general supervisory powers over liquor licensing.

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. STANDARD FOR ISSUANCE OF A STAY**

Under *Narragansett Electric Company v. William W. Harsch et al.*, 367 A.2d 195, 197 (1976), 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." 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). The issue before the undersigned is a motion to stay a Decision which is subject to a *de novo* appeal and does not fall under R.I. Gen. Laws § 42-35-15(c). Nonetheless, 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. PRIOR DISCIPLINE**

The parties represented that the Appellant has no prior discipline.

## V. ARGUMENTS AND DISCUSSION

The information received by the undersigned is based on representations of the parties. The undersigned did not have a transcript of the Board hearing.

The parties agreed that nine (9) incidences were brought before the Board regarding the Appellant and that of these nine (9) incidences, five (5) related to parking, two (2) related to assaults, one (1) related to operating after hours, and one (1) related to loud music. The parties agreed that the alleged assaults were in January and December, 2016. The Appellant represented that the loud music complaints were from the summer of 2016 when the Appellant had an outside event which it does not plan to do so again. The parties agreed that the parking issues relate to the Appellant's patrons parking at a vacant school across the street from the Appellant's location.

The Appellant represented that it had had put cones in the school parking lot to stop the parking, but the cones had been moved. It is believed that at one point there was a chain across the school lot. The parties agreed that the Appellant had offered to have a private security staff member direct parking and direct patrons not to park at the school and that the Appellant offered to put signs in its building not to park at the school. In addition, the police have been ticketing cars parked in the parking lot. The Appellant argued that it did not want patrons parking in the parking lot because it does not want its patrons to receive parking tickets.


The Appellant argued that the police detail would be an onerous financial burden and that the parking concerns could be addressed by a private security staff member. The Board argued that the police detail was imposed because of the repeated patterns of behavior by the Appellant.

Applying the stay criteria, a stay will not be issued if the party seeking the stay cannot make a strong showing that it will prevail on the merits of its appeal. However, if a stay is not issued, the Appellant will not be able to have a meaningful hearing on the matter.

**VI. RECOMMENDATION**

In an effort to resolve this matter in an efficient manner and without a further appeal process, this matter is remanded to the Board. At this time, the Department will refrain from issuing a stay, but the Board shall hear this matter as soon as possible. At the remand hearing, the Board shall further consider whether it could review the detail within 30 days of the imposition (and at the time consider whether to continue the detail or whether to allow the Appellant to utilize a private security staff member) and/or whether at this time to condition the Appellant's liquor license on employing a weekend security staff member on Fridays and Saturdays to be on duty to handle parking issues (and any other issues) with a chance to review by the Board.

Dated: March 27, 2017

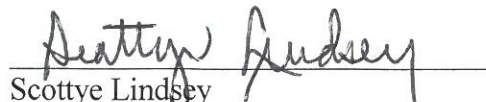
  
Catherine R. Warren  
Hearing Officer

**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:

ADOPT  
 REJECT  
 MODIFY

Dated: 3/28/17

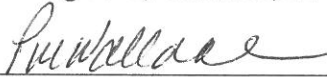
  
Scottye Lindsey  
Director

**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 29 day of March, 2017 that a copy of the within Order was sent by email and first class mail, postage prepaid, and electronic delivery to the following: John C. Manni, Esquire, 1405 Plainfield Street, Johnston, RI 02919 and William J. Conley, Esquire and Andrew Cormier, Esquire, Law Office of William J. Conley, Jr., 123 Dyer Street, Unit 2B, Providence, RI 02903 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

  
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