

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

Montecristo Restaurant, LLC,
Appellant,

v.

City of Providence, Board of Licenses,
Appellee.

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DBR No. 22LQ001

ORDER RE: MOTION FOR STAY

I. INTRODUCTION

This matter arose from a motion for a stay filed on January 28, 2022 by Montecristo Restaurant, LLC (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on January 26, 2022 by the City of Providence, Board of Licenses (“Board”) to deny the Appellant’s renewal application for its Class BV a liquor license (“License”). A hearing¹ on the motion to stay was heard on February 1, 2022 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);

¹ The hearing was held remotely due to Covid19.

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 (R.I. 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. DISCUSSION

Based on the representations of the parties at hearing, the following can be ascertained. The Appellant's owner was scheduled to appear before the Board on January 26, 2022 for a hearing on the Appellant's application to renew its License. At that time, the Appellant was not represented by counsel. Due to the Governor of Rhode Island's recent executive order, the Board's meeting was held remotely. The parties agreed that the Appellant's owner did not dial in to the meeting. The Appellant's counsel represented that the owner was unable to dial in and believed that the meeting had been canceled. The Appellant's counsel provided a copy of a screen shot that the owner took to show he had tried to dial in. The Board represented that it was not aware of any issue with the audio on that day but acknowledged that the number that owner tried to access was the dial in number.

As the Appellant did not appear at hearing, the Board denied the Appellant's application for its License renewal. As a consequence, the Board never reached the issue of whether the Appellant met the statutory requirements to renew the License and did not hear if the Appellant had addressed its entertainment without a license issue.

The Appellant requested that a stay of the denial of the renewal application be granted, and that this matter be remanded to the Board so that a full hearing can be conducted on the renewal application. The Appellant represented that as it is now represented by counsel, counsel would be with the owner to dial in for any future hearings and would be able to notify the Board of any dial in issues.

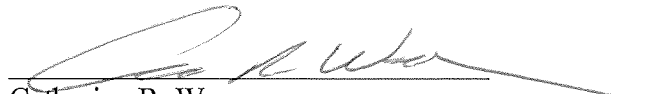
The Board indicated that there were no safety issues associated with the Appellant. Rather there are issues over noise complaints and whether the statutory requirements for renewal have been met. Neither the Board nor the City took a position on the motion for stay or remand request.

In order for the Board to hear the full renewal application, it is necessary to remand this matter back to the Board. With the remand, the Board can hear the full application renewal and make a decision and ensure that the Appellant is heard on its application. As the Board will be hearing this matter, a stay can be granted in order to maintain the *status quo*.

V. RECOMMENDATION

Based on the foregoing, the undersigned recommends that a stay be granted for the denial of the renewal of license application pending a remand to the Board for the Board to hold a full hearing on the renewal application and issue a decision on that application.

Dated: 2/2/22



Catherine R. Warren
Hearing Officer

INTERIM 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:

 X ADOPT
 REJECT
 MODIFY

Dated: 02/02/2022


Elizabeth M. Tanner, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS ORDER CONSTITUTES AN INTERLOCUTORY ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-15. 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 2nd day of February, 2022 that a copy of the within Order and Notice of Appellate Rights were sent by email and first class mail, postage prepaid, to the following: Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903, Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904, and Louis A. DeSimone, Jr., Esquire, 1554 Cranston Street, Cranston, R.I. 02920 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Diane L. Paravisini

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