

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

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<b>Montecristo Restaurant, LLC,</b>	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	<b>DBR No.: 22LQ001</b>
	:	
<b>City of Providence, Board of Licenses,</b>	:	
<b>Appellee.</b>	:	

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**ORDER: RE MOTION FOR STAY**

**I.     INTRODUCTION**

This matter arose from an appeal and motion for a stay filed on March 16, 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 March 16, 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”). This matter initially came before the Department pursuant to an appeal filed on January 28, 2022. By order dated February 2, 2022, the Department remanded the matter back to the Board for a hearing on the Appellant’s application. A hearing<sup>1</sup> on the second motion for stay was heard on March 18, 2022 before the undersigned.

**II.    JURISDICTION**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 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.*

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<sup>1</sup> The hearing was held remotely due to Covid19.

### III. DENIAL OF APPLICATION FOR RENEWAL OF LICENSE

Pursuant to R.I. Gen. Laws § 3-7-6, the Appellant's Class BV application for renewal of license may be denied "for cause." Said statute provides as follows:

Renewal of Class A, Class B, Class C, Class D, Class E, and Class J licenses. The holder of a Class A, Class B, Class C, Class D, Class E, or Class J license who applies before October 1 in any licensing period for a license of the same class for the next succeeding licensing period is prima facie entitled to renewal to the extent that the license is issuable under § 3-5-16. This application may be rejected for cause, subject to appeal as provided in § 3-7-21.

In *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61, 63 (R.I. 1971), the Rhode Island Supreme Court rejected the argument that a license renewal may only be based on breaches of R.I. Gen. Laws § 3-5-21<sup>2</sup> or R.I. Gen. Laws § 3-5-23<sup>3</sup> but instead found "that a cause, to justify action, must be legally sufficient, that is to say, it must be bottomed upon substantial grounds and be established by legally competent evidence." See also *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269 (R.I. 1984); and *Edge-January, Inc. v. Pastore*, 430 A.2d 1063 (R.I. 1981). In *Chernov*, renewal was denied because the licensee's president had supported perjury of two (2) minors that had been served by the licensee. In *Edge-January*, the renewal was denied as it was found that the

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<sup>2</sup> R.I. Gen. Laws § 3-5-23 states in part as follows:

Revocation or suspension of licenses – Fines for violating conditions of license. – (a) Every license is subject to revocation or suspension and a licensee is subject to fine by the board, body or official issuing the license, or by the department or by the division of taxation, on its own motion, for breach by the holder of the license of the conditions on which it was issued or for violation by the holder of the license of any rule or regulation applicable, or for breach of any provisions of this section.

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<sup>3</sup> R.I. Gen. Laws § 3-5-23 states in part as follows:

(b) If any licensed person permits the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood . . . he or she may be summoned before the board, body, or official which issued his or her license and before the department, when he or she and the witnesses for and against him or her may be heard. If it appears to the satisfaction of the board, body, or official hearing the charges that the licensee has violated any of the provisions of this title or has permitted any of the things listed in this section, then the board, body, or official may suspend or revoke the license or enter another order.

neighbors' testimony had shown a series of disorderly disturbances happening in front of the licensee's premises that had their origins inside.

In discussing the type of evidence required to be proved for a denial, the Rhode Island Supreme Court found in *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269, 275 (R.I. 1984) as follows:

We have said at least twice recently that there need not be a direct causational link between incidents occurring outside or nearby a drinking establishment and its patrons. Such a link is established when it can be reasonably inferred from the evidence that the incidents occurred outside a particular establishment and had their origins within. *The Edge-January . . . Manuel J. Furtado, Inc. v. Sarkas*, 373 A.2d 169, 172 (R.I. 1977).

While this is a denial of renewal matter, it is similar to a revocation case in that there needs to be finding of cause. *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964).

#### **IV. THE REASONS GIVEN FOR DENIAL OF RENEWAL**

An audio recording of the Board's March 16, 2022 hearing was not available on the City's online portal. However, based on the representations of the parties at hearing, there is an issue over entertainment. The Appellant's location is not in an area licensed for entertainment so it cannot obtain an entertainment license. The Appellant advertised on social media that it would be having disc jockeys ("D.J.'s"). It then deleted some of these advertisements off of a social media account. The Appellant represented that the D.J.'s being advertised were merely for appearances and not for the playing of music. The Board argued that the deleting of the advertisements goes to the fitness of the licensee. In addition, the Board received complaints from the neighbors, but represented the bulk of the denial was the issue of the D.J.'s. The City represented that there are no late night concerns as this license has an 11:00 p.m. closing time. In fact, currently the license is on a 10:00 p.m. closing time. There were no disorderly conduct issues mentioned at hearing. No prior discipline was brought up at hearing.

## V. 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.

## VI. ARGUMENTS

The Appellant argued that there have been violations, but they do not rise to the level of the denial of renewal.

## VII. DISCUSSION

Liquor licensees are responsible for conduct that arises within their premises and for conduct that occurs off premises but can be reasonably inferred from the evidence had their origins inside. The Appellant apparently advertised it had D.J.’s but whether there was entertainment without a license has not been determined. The Board (an interested party) has an interest in ensuring that liquor licensees – where the public gather - are compliant with their statutory

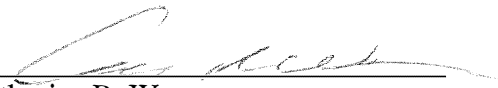
obligations. There has been no evidence of any public protection interest due to violence. Granting a stay maintains the *status quo* pending the appeal.

**VIII. RECOMMENDATION**

Based on the foregoing, the undersigned recommends that the Appellant’s motion for a stay of the denial of License renewal be granted on the following conditions:

1. No advertising that it has D.J.’s.; and
2. The Appellant continues to close at 10:00 p.m.

Dated: March 22, 2022


  
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: 03/24/2022

  
Elizabeth M. Tanner, Esquire  
Director

**A hearing will be scheduled on a mutually convenient date to be determined by the parties.<sup>4</sup>**

<sup>4</sup> Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant is responsible for the stenographer.

**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 24th day of March, 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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