



## 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.*

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. *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. DISCUSSION

The Appellant holds a Class BV liquor license which pursuant to R.I. Gen. Laws § 3-7-7 allows it to serve alcohol to 1:00 a.m. On August 22, 2022, the Town imposed a 14 day license suspension on the Appellant's liquor license. The fourteenth day from August 23, 2022 is September 6, 2022 so that by the terms of the liquor suspension, the Appellant would have stopped serving liquor for 14 days (its victualing license was not suspended) and then on September 7, 2022 would have been allowed to start serving alcohol again.

However, the Appellant appealed the suspension, and the Department issued a stay of the suspension pending a full hearing and imposing certain conditions. One condition of the stay was based on the Appellant's representations of its usual closing time. As a result, the stay was conditioned on the Appellant closing by its usual closing time of 10:00 p.m.

In its motion, the Appellant represented and provided an affidavit from its owner that the Appellant has six (6) upcoming private functions that were pre-booked and are scheduled to last beyond 10:00 p.m. Only one (1) event is scheduled to occur prior to the expiration of the original liquor license suspension. The other events are scheduled to take place after the Appellant would have been able to resume liquor sales under the initial liquor license suspension. The one (1) event scheduled to take place prior to the end of the original suspension is a private beach gathering of 20 people. The other events that are scheduled to take place after September 6, 2022 include a wedding reception, a rehearsal dinner, a corporate dinner, and two (2) post-wedding gatherings.

The Appellant requested a modification of the stay order to allow for the service of alcohol during these events. The Appellant argued that as most events are scheduled after the Town's initial suspension, the Town cannot have thought there would be a public danger after Labor Day weekend for the Appellant to continue to serve alcohol. The Appellant represented that it would not be open to the general public after 10:00 p.m. while these events are scheduled to occur. The Appellant argued that since it would not be open to the public after 10:00 p.m. during these private events, the only harm in not allowing a stay is to the attendees of these events. The Town objected and argued that the initial stay was granted after hearing, and there is no reason to vary its terms.

The initial suspension was scheduled to end after Labor Day weekend which based on testimony at the Town hearing represents the end of the summer season at Block Island. In light of the fact that the suspension would have terminated prior to five (5) of the six (6) events happening, there is no public safety issue. The one (1) event scheduled to occur prior to September 6, 2022 is a private event for 20 people. The Appellant represents that it will be closed to the public after 10:00 p.m. during these six (6) events.

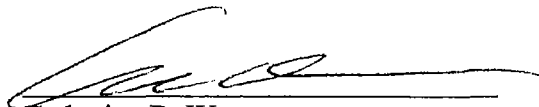
#### **V. RECOMMENDATION**

Based on the foregoing, the stay order entered on August 24, 2022 shall be modified so that the Appellant may close at 1:00 a.m. for the six (6) pre-booked events as referenced in its motion and scheduled for September 3, 9, 14, 16, 17, and 24. For those dates, the Appellant must still close to the general public by 10:00 p.m. but will be allowed to serve alcohol for the six (6) private events to 1:00 a.m. as allowed by its License.

Nothing in this order precludes the parties from agreeing to a modification of a stay.

Nothing in this order precludes either party from petitioning the undersigned to revisit this order because of a change in circumstances.

Dated: August 31, 2022

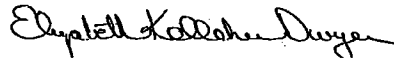
  
Catherine R. Warren  
Hearing Officer

**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:

  X   ADOPT  
       REJECT  
       MODIFY

Dated: August 31, 2022

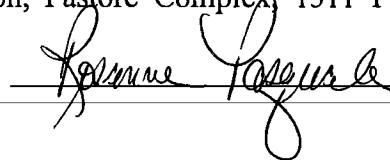
  
Elizabeth Kelleher Dwyer, Esquire  
Interim Director

**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 1st day of September, 2022 that a copy of the within Order was sent by electronic delivery and first class mail, postage prepaid, to the following: Brian LaPlante, Esquire, Michael J. Jacobs, Esquire, and Justin T. Bonnick, Esquire, LaPlante Sowa Goldstein, 78 Kenwood Street, Cranston, R.I. 02907, James M. Callaghan, Esquire, Callaghan & Callaghan, 3 Brown Street, Wickford, R.I. 02852, and Nicholas A. Solitro, Esquire, Robert E. Craven & Associates, 7405 Post Road, North Kingstown, RI 02852 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02920.

  
Rosanne Ferguson