

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

Hollywood Lounge, LLC, Appellant,	:	
	:	
v.	:	DBR No. 22LQ013
	:	
North Providence Town Council, Appellee.	:	
	:	

ORDER RE: MOTION FOR STAY

I. INTRODUCTION

This matter arose from a motion for stay and appeal filed on November 15, 2022 by Hollywood Lounge, LLC (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on November 14, 2022 by the North Providence Town Council (“Board”) revoking the Appellant’s Class BV liquor license (“License”).¹ A remote hearing on the motion to stay was heard on November 22, 2022 before the undersigned who was delegated to hear this matter by the Director of the Department. The parties were represented by counsel.

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.*

¹At the Board hearing, the Board also revoked the Appellant’s victual and entertainment licenses. Appeals to the Department can only relate to the liquor license held by the Appellant. *El Nido v. Goldstein*, 626 A.2d 239 (R.I. 1993) (victualing license is a separate and distinct license from a liquor license). The Appellant has a Class B liquor license which is conditioned on holding a victualing license.

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 *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. THE BASIS FOR REVOCATION

R.I. Gen. Laws § 3-5-21 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.

R.I. Gen. Laws § 3-5-29 provides as follows:

Prohibition against assignment or leasing of license. The holder of a license issued pursuant to this title shall not assign, rent, lease or let the license but may transfer his or her interest only as provided in § 3-5-19.

Section 1.4.25 of the 230-RICR-30-10-1 *Liquor Control Administration* ("Liquor Regulation") provides as follows:

Management Company - Retail

A. The holder of an alcoholic beverage license may not lease, assign, rent, or let the licensee or give management operational rights or control of the licensed premises to a third party.

B. Transfer of a license by a licensee to a "management company" or third party is prohibited.

C. All requests to assign interests, including but not limited to a percentage of profits, are prohibited.

In order to suspend or revoke a liquor license, there must be a showing that the holder breached an applicable rule or regulation. In order to impose discipline, cause must be found. *Chernov Enterprises, Inc. v. Sarkas*, 109 R.I. 283, 287 (1971) found that cause shall mean, “we have said 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.” (italics in original).

The Department reviews sanctions to ensure statewide consistency and appropriateness in the situation. It also supports progressive discipline barring the rare and extreme event where revocation may be warranted without prior discipline. It also accepts the principles of comity and deference to the local authorities and their desire to have control over their own town or city. At the same time, pursuant to R.I. Gen. Laws § 3-2-2 and R.I. Gen. Laws § 3-7-21, the Department ensures that tensions between local boards and licensees are settled in a consistent manner. Nonetheless, there is not a mechanical application of sanctions as each matter has its own sets of circumstances. See *C&L Lounge, Inc. d/b/a Gabby's Bar and Grille; Gabriel L. Lopes v. Town of North Providence*, LCA – NP-98-17 (4/30/99). At the same time, a sanction cannot be arbitrary and capricious. The unevenness of the application of a sanction does not render its application unwarranted in law but excessive variance would be evidence that an action was arbitrary and capricious. *Pakse Market Corp. v. McConaghy*, 2003 WL 1880122 (R.I. Super.) (upholding revocation for a series on infractions). See *Jake and Ella's v. Department of Business Regulation*, 2002 WL 977812 (R.I. Super.) (R.I. Super.) (overturning a revocation of a liquor license as arbitrary and capricious).

IV. 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.

V. PRIOR DISCIPLINE

The parties agreed that the Appellant was licensed in June, 2020 and previously has not had its liquor licensed formally sanctioned.

VI. 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; however, the Board provided the undersigned with the video of the June 2, 2020 initial licensing hearing and an audio of the November 14, 2022 hearing to which the undersigned listened.²

² See <https://www.youtube.com/watch?v=6C3Byrp-DPc> [youtube.com] for the June 2, 2022 Board meeting. See https://drive.google.com/file/d/1qDQ5FaP7wUqOJ54rooNHvmSb8_XMu-2_/view?usp=drive_web [drive.google.com] for the November 14, 2022 Board hearing. (This audio was unclear in parts).

Angel Matos is the owner of the Appellant who was granted the License on June 2, 2020. The testimony at the November 14, 2022 hearing was that the police were informed in October, 2022 by Anthony Luisi that he was the new owner of the Appellant. Frank Matos, Angel's uncle, told the police that Angel Matos was at an unknown address in Massachusetts. The Appellant's corporate charter was revoked on October 11, 2022. On that day, Anthony Luisi filed a new corporate charter in the name of ElevenPVD. ElevenPVD was listed as being in the same location as the Appellant on the corporate forms. The Appellant's premises had been remodeled three (3) weeks prior to the weekend entitled grand opening on Instagram postings with the new name of ElevenPVD. The documentary and Instagram video evidence appears to show a change in the nature of the business as well as calling the last weekend in October, 2022, a grand opening. The evidence also was that Frank Matos told the police that the kitchen was not open. The Board did not receive a transfer application or any notification of a change in name. Angel Matos appeared at the Board hearing but declined to speak on the matter before the Board.

At the stay hearing, it was represented that the Appellant filed proof of insurance the day after the Board hearing in its original name. The insurance expires on December 3, 2022. The Board had subpoenaed the Appellant to produce various documents for the Board hearing which the Appellant's attorney indicated he did not have time to comply with prior to the Board hearing and had filed a motion for a protective order. The Appellant has filed a renewal application, and the Board is due to consider that application on December 6, 2022. The parties indicated that they would speak prior to the renewal hearing, and that the Appellant could comply with the subpoena by December 6, 2022.

The Appellant argued that the allegations do not merit revocation. It argued that it provided proof of its insurance the day after the Board hearing. It argued that Frank Matos is the uncle of

the Appellant's owner, Angel Matos, and has managed the licensee for the last two-and-a-half years. It argued that Anthony Luisi is interested in buying the business but is not running the business. Instead, the Appellant argued it only remodeled and changed its business plan, and that Angel Matos is still the owner. It argued that it would suffer irreparable harm in the loss of business, good will, and staff if a stay is not granted, and there are no public safety issues. It represented that it was amenable to a stay being issued contingent on reinstating its corporate charter.

The Board argued that the totality of the circumstances demonstrate that at least a leasing – if not a sale – of the License has taken place. The Board argued that these circumstances include that Anthony Luisi said he was the new owner, the Appellant's charter was revoked, Anthony Luisi filed a charter for ElevenPVD at the Appellant's location, and ElevenPVD had a grand opening weekend after the building was remodeled with a new business plan. The Board objected to a stay being issued but indicated that if one was granted it should be conditioned on reinstating the corporate charter, insurance being in place longer than to December 3, 2022, Angel Matos being on-site, Angel Matos providing an usable address, if the Appellant is to offer hookah, it should appear before the Board as it promised it would at its initial licensing if it started to offer hookah, compliance with subpoena, and a usable kitchen.

In *Salacruz, LLC d/b/a Sky Lounge v. City of Providence Board of Licenses*, DBR No. 14LQ046 (11/25/14), the licensee failed to comply with a subpoena in order to establish the actual relationship between the owner and a so-called manager. That refusal to comply with the subpoena provided the basis to conclude that licensee violated R.I. Gen. Laws § 3-5-29 and § 1.4.25 of the Liquor Regulation by assigning or leasing its liquor license to the so called manager. The decision found that a liquor licensee is issued a license and is responsible for that license. It cannot

outsource that responsibility by allowing someone else – not issued the license and unknown to the licensing authority - to act as the licensee by having operational control or control of the licensed premises. Such a violation is egregious as it circumvents the purpose, intent, and the actual regulatory scheme of the liquor licensing statute and is grounds for revocation. *Salacruz* revoked the liquor license since the licensee leased or assigned its license and refused to comply with the subpoena.

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. It is discretionary to issue a stay in order to maintain the *status quo* pending an appeal. Here, there was no evidence that the Appellant has a substantial likelihood of success on the merits since it presented no evidence at the Board hearing that the grand opening was only a change in business plan for the current owner. Rather at the Board hearing, the evidence was there was a new corporate charter in the name of ElevenPVD and that the owner of ElevenPVD told the police he was the new owner. The business had a grand opening with the new name after a remodel and appears to have a new business plan. Angel Matos, the licensee of record, refused to speak at the Board hearing. This is not an issue of progressive discipline for disorderly violations or statutory or regulatory violations. The Appellant presented no evidence at the Board hearing regarding ownership.

The Appellant argued that revocation was not warranted in this matter. However, the statute and regulation mandate that a liquor license cannot be leased or transferred. The local licensing authority needs to know who is operating and in control of a licensee. Here, the Board will be hearing the Appellant's renewal application on December 6, 2022 so the Appellant will shortly be able to address these issues to the Board and hopefully shed light on who is actually in charge.

Based on the evidence that the Board heard, there was a basis to find that Angel Matos was no longer in control of the License. A stay cannot be issued without ensuring that Angel Matos is still the licensee and is in control of the business, and that the licensee is compliant with all applicable statutes and regulations.

VII. RECOMMENDATION

Based on the foregoing, the undersigned recommends that a stay be granted for the revocation of the Class BV license but on the condition that the Appellant complies with the following prior to serving alcohol again (assuming it is able to reinstate its victualing license):

1. Reinstate its corporate charter;
2. Provide the Board with an updated address for Angel Matos;
3. Comply with the subpoena prior to December 6, 2022 so that the Board will have those documents to consider at the renewal hearing;
4. Provide insurance that covers at least up to six (6) months or insurance coverage that meets the Board's requirement for renewal;³
5. Have a working kitchen that complies with all statutory and regulatory requirements;
6. Identify to the Board by December 6, 2022, the Appellant's hours of operation, its business plan (has it changed from its initial representation to be operated like the prior pub licensee at that location); the name(s) of any manager, the work schedule for manager(s), and if Angel Matos is ever on-site, and if so when;
7. Clarify and confirm to the Board any involvement by Anthony Luisi in the Appellant. E.g. is he employed by the Appellant? Is he supposed to be a manager?;

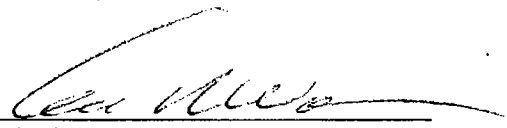
³ It is not expected that the Appellant could comply with all conditions by December 3, 2022, but it is noted that the Appellant's insurance currently expires on December 3, 2022 so it cannot open without insurance coverage.

8. As represented by the Appellant at its initial licensing hearing, it will inform the Board on December 6, 2022 whether it wishes to become a smoking bar. If so, it must comply with all statutory requirements.⁴

9. Angel Matos needs to address the issues of how the Appellant is being operated and run at the renewal hearing before the Board.

At the renewal hearing, the Board and the Appellant may be able to fashion its own resolution of the revocation and/or renewal or if the Board decides to renew the License, it may impose new or additional requirements on the License. If the parties are unable to reach a resolution, the appeal of the revocation may be continued, if the Appellant chooses, and a hearing scheduled.⁵

Dated: November 23, 2022

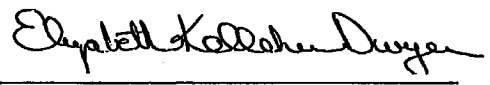

Catherine R. Warren
Hearing Officer

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:

ADOPT
 REJECT
 MODIFY

Dated: 11/25/2022


Elizabeth Kelleher Dwyer
Interim Director

A hearing will be scheduled, if needed, on a mutually convenient date to be determined by the parties.⁶

⁴ Thus, for example, if the Appellant is to allow public smoking (including hookah), it would have to qualify as a smoking bar pursuant to R.I. Gen. Laws § 23-20.10-2(20).
⁵ Obviously, if the Appellant receives what it considers an adverse decision on its renewal, that would require a separate filing of an appeal.
⁶ 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 25th day of November, 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: Nicholas Hemond, Esquire, DarrowEverett, LLP, 1 Turks Head Place, Suite 1200, Providence, R.I. 02903, and Mark P. Welch, Esquire, 141 Power Road, Suite 106, Pawtucket, R.I. 02896, and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.